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## TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1947

No. 87

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ORSEL McGHEE AND MINNIE S. McGHEE, HIS  
WIFE, PETITIONERS,

vs.

BENJAMIN J. SIPES AND ANNA C. SIPES, JAMES  
A. COON AND ADDIE A. COON, ET AL.

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE  
OF MICHIGAN

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PETITION FOR CERTIORARI FILED MAY 10, 1947.

CERTIORARI GRANTED JUNE 23, 1947.

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 87

ORSEL McGHEE AND MINNIE S. McGHEE, HIS  
WIFE, PETITIONERS,

vs.

BENJAMIN J. SIPES AND ANNA C. SIPES, JAMES  
A. COON AND ADDIE A. COON, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE  
OF MICHIGAN

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[fol. 1] IN SUPREME COURT OF MICHIGAN.

No. 43271

DOCKET ENTRIES

Parties:

BENJAMIN J. SIPES, et al., Plaintiffs,

vs.

ORSEL McGHEE, et al., Defendants and Appellants

Plaintiffs' Attorneys: Younglove & Chockley.

Defendants' Attorneys: Willis M. Graves, Francis M. Dent.

Appeal from Wayne, I<sup>r</sup> Chancery

Date Proceedings

1945

Dec. 1. Application for leave to appeal filed.

Dec. 5. Stay order issued.

Dec. 6. Motion to dismiss and brief in opposition filed.

1946

Jan. 10. Application granted, stay continued.

Apr. 17. Record on appeal filed.

Apr. 26. Note of argument filed.

May 17. Motion to dismiss filed.

May 22. Motion to continue filed.

June 3. Motion to continue granted, to dismiss denied, no costs.

Oct. 3. Stipulation to docket filed.

Oct. 16. Argued in part.

Oct. 17. Concluded and submitted.

1947

Jan. 7. Affirmed, costs.

Jan. 17. Record returned to Court below.

Feb. 18. Motion for rehearing submitted.

Mar. 3. Motion for rehearing denied, costs to plaintiffs.

Mar. 24. Motion for stay of proceedings filed.

Apr. 8. Motion for stay of proceedings granted.

[fol. 2] IN SUPREME COURT OF MICHIGAN

[Title omitted]

## ORDER GRANTING STAY—December 5, 1945

In this cause an application is filed for leave to appeal from the decree of the Circuit Court for the County of Wayne, in Chancery, and a motion is filed for the allowance of an stay of proceedings, and due consideration thereof having been had by the Court, it is ordered that all proceedings under the trial court's decree and order to show cause are hereby stayed pending determination of application for leave to appeal and until the further order of this Court.

IN SUPREME COURT OF MICHIGAN

[Title omitted]

## ORDER GRANTING LEAVE TO APPEAL—January 10, 1946

In this cause an application is filed by defendants for leave to appeal from the decree of the Circuit Court for the County of Wayne, in Chancery, and a motion is filed to dismiss said application, and a brief in opposition to said application having been filed by plaintiffs, and due consideration thereof having been had by the Court, it is ordered that the application be and the same is hereby granted. It is further ordered that the stay order issued herein on December 5, 1945, be and the same is hereby continued in full force and effect until the further order of this Court.

IN SUPREME COURT OF MICHIGAN

[Title omitted]

## ORDER DENYING MOTION TO DISMISS ETC.—June 3, 1946

In this cause a motion is filed by defendants to continue the cause over the June, 1946, Term of this Court and a motion is filed by plaintiff to dismiss the appeal heretofore taken herein by defendants, and due consideration thereof

having been had by the Court, it is ordered that the motion to dismiss be and the same is hereby denied, but without costs, and that the motion to continue be and the same is hereby granted, but without costs.

IN SUPREME COURT OF MICHIGAN.

[Title omitted]

MINUTE ENTRY—October 16, 1946

[fols. 4-8] This cause coming on to be heard is argued in part.

IN SUPREME COURT OF MICHIGAN

[Title omitted]

MINUTE ENTRY—October 17, 1946

The argument heretofore commenced herein is concluded and the cause duly submitted.

[fol. 9] IN CIRCUIT COURT OF WAYNE COUNTY

CALENDAR ENTRIES

1945

- Jan. 30 Bill of complaint filed. Summons issued.  
30 Order to show cause signed, filed.
- Feb. 2 Summons returned served, filed.  
9 Appearance of defendants, filed.  
16 Answer, filed.  
21 Motion and notice to advance, filed.  
23 Praeceipe for causes ready for trial filed no. 58889.
- Mar. 1 Proof of service of motion to advance cause, notice, filed.  
2 Order granting motion to advance cause signed, filed.
- Apr. 5 Pre-trial statement; filed.  
7 Proof of service of pre-trial statement, filed.

1945

- 18 Fee paid. Case returned to call. Court sheet,  
Judge Guy A. Miller. \$6.00.
- 20 Transcript of testimony, filed.
- May 28 Heard by the court. Hearing in progress. Court  
sheet, Judge Miller.
- 29 Amended answer, filed.
- 29 Hearing in progress. Court sheet, Judge Miller.  
Opinion of the court signed, filed.
- Aug. 23 Brief in support of motion to dismiss bill, filed.
- 24 Brief of plaintiffs, filed.
- 29 Proof of service of decree and notice of settle-  
ment, filed.
- 29 Proof of service of notice of entry of decree, filed.
- [fol. 10]  
29 Decree signed, filed, entered. Judge Guy A.  
Miller.
- Sep. 19 Enrolled this date.
- Oct. 26 Affidavit, motion to set aside decree and notice,  
filed.
- Nov. 13 Opinion on motion for rehearing signed, filed.
- 16 Order denying rehearing and notice, filed.
- 16 Proof of service of order denying rehearing and  
notice, filed.
- 20 Notice of entry of order denying motion and  
proof of service, thereof, filed.
- 23 Motion for granting of a stay bond and a bond  
on appeal heard and denied. Court sheet,  
Judge Miller.
- 23 Motion for granting stay bond, and notice, filed.
- 27 Proof of service of claim of appeal, filed.
- 27 Claim of appeal, filed (\$5 fee paid).
- Dec. 3 Petition and order to show cause signed, filed.
- 6 Order staying proceedings, filed.

1946

- Jan. 28 Order granting leave to appeal received, filed.
- 28 Claim of appeal, filed (\$5 fee paid).
- 28 Bond to stay proceedings on appeal to Supreme  
Court, filed #71867.
- 29 Motion to extend time and notice, filed.
- 29 Order extending time signed, filed, entered.  
Judge Guy A. Miller.

1946

- Feb. 20 Motion to extend time and notice, filed.  
20 Order extending time signed, filed; entered.  
Judge Guy A. Miller.
- Mar. 13 Order extending time signed, filed, entered.  
Judge Guy A. Miller.
- [fol. 11]
- Apr. 9 Record on appeal settled and certified this date.  
Referred to Mr. Graves. Court sheet, Judge  
Guy A. Miller.
- 9 Settled case on appeal, filed.
- 9 Notice of transmission of record on appeal to the  
Supreme Court, filed.

[fol. 12] IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE.  
IN CHANCERY

Hon. Guy A. Miller, Circuit Judge

Calendar No. 43271

BENJAMIN J. SIPES and ANNA C. SIPES, JAMES A. COON and  
Addie A. Coon, et al., Plaintiffs and Appellees,

v.

ORSEL McGHEE and MINNIE S. McGHEE, his wife, Defendants  
and Appellants

DEFENDANTS' REASONS AND GROUNDS OF APPEAL—Filed  
April 9, 1946

The reasons and grounds of appeal are:

The Court erred:

1. In holding that the doctrine of reciprocal negative easement applied in this case.
2. In holding that the instruments relied on by the plaintiffs as establishing a general plan or agreement were complete as a matter of law.
3. In determining that the race of the defendants had been proved to the court.

[fol. 13] 4. In holding that the relief prayed was not directly against Section 16, Article II, and other sections of the Constitution of the State of Michigan.

5. In holding that the alleged restriction was not void for uncertainty.

6. In holding that the alleged restriction was not void as being against public policy.

7. In holding that the enforcement of the race restriction set forth in the Bill of Complaint by a court of Equity or by a decree of a court of Equity or by a decree of any Court of the State of Michigan was not violative of the Fourteenth Amendment to the Constitution of the United States of America and in that the enforcement of the decree by a court of Equity would not deny to the defendants, and each of them, equal protection of the laws of the State of Michigan, and of the ~~United~~ States of America, and in that it would not constitute a taking of the defendant's property without due process or any process of law.

8. In failing to hold that the general plan of developing the Subdivision had not been violated when 90% of residents on Tireman Avenue in Subdivision are Negroes.

Willis M. Graves and Francis M. Dent, Attorneys for Defendants and Appellants.

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[fol. 14] IN CIRCUIT COURT OF WAYNE COUNTY

BILL OF COMPLAINT—Filed January 30, 1945

To the Circuit Court for the County of Wayne, In Chancery:

Now comes the above named plaintiffs, by Younglove and Chockley, their attorneys, filing this bill on behalf of themselves and all other owners of property in Seebaldt's Subdivision and Brooks and Kingon's Subdivision, located on Seebaldt Avenue, between Firwood and Beechwood Avenues, in the City of Detroit, Wayne County, Michigan, who

may care to join herein, and respectfully show unto the court as follows:

1. That plaintiffs, respectively, own lots in Seebaldt's Subdivision as follows:

Lot No. 53, by Benjamin J. Sipes and Anna E. Sipes, his wife;

Lot No. 68, by James A. Coon and Addie A. Coon, his wife;

Lot No. 45, by Edward F. Secunda and Anna L. Secunda, his wife;

Lot No. 49, by C. James Donovan and Elizabeth Donovan, his wife;

Lot No. 69, by William A. Kresin and Freda A. Kresin, his wife;

Lot No. 54, by Kathryn Lynn;

Lot No. 50, by Alyin C. Smith.

[fol: 15] 2. That plaintiffs, respectively, own lots in Brooks and Kingon's Subdivision as follows:

Lot No. 193, by Lora D. McMurdy;

Lot No. 196, by Herman Guse;

Lot No. 195, by August J. Becker and Anna Becker, his wife;

Lot No. 192, by Daniel J. Kuntz and Carolyn Kuntz, his wife;

Lot No. 200, by George A. Strohmer and Gertrude T. Strohmer, his wife;

Lot No. 199, by Irene L. Stofflett.

3. That all of the above described lots are located on Seebaldt Avenue, between Firwood and Beechwood Avenue, in the City of Detroit, Michigan, and are, with one or two exceptions, used and occupied by plaintiffs as their respective homes.

4. That defendants, Orsel McGhee and Minnie S. McGhee, his wife, are the owners of Lot 52 Seebaldt's Subdivision, commonly known as 4626 Seebaldt Avenue, located between Firwood and Beechwood Avenues, in the same block in which plaintiffs' homes are located.

5. That both plaintiffs' and defendants' properties above described are subject to the following restriction:

"This property shall not be used or occupied by any person or persons except those of the Caucasian race."

which restriction was signed and imposed on defendants' property by John C. Furgeson and Meda Furgeson, his wife, through whom defendants claim title, and was recorded on September 7, 1935, in Liber 4505 of Deeds, at page 610, Wayne County Register of Deeds Office.

6. That defendants Orsel McGhee and Minnie S. Mc [fol. 16] Ghee, his wife, are not of the white or Caucasian race, but are of the colored or Negro race.

7. That said defendants, being of the Negro race and well knowing the restricted character of the neighborhood and particularly of the block on Seebaldt Avenue, between Firwood and Beechwood Avenues, have moved into and are now using and occupying the house at 4626 Seebaldt Avenue, in direct violation of said restriction limiting the use and occupancy thereof to persons of the white or Caucasian race.

8. That the restricted character of Seebaldt Avenue, and particularly of the block where defendants' property is located, as an exclusively white residential neighborhood, has been uniformly observed since the property was subdivided and the continued violation of said restriction will cause irreparable injury to these plaintiffs and all other owners in the vicinity by greatly reducing the desirability and value of their properties.

9. That defendants have been asked to abide by said restriction and to limit the use of the occupancy of their said property to persons of the Caucasian race, but have refused to do so.

10. That plaintiffs will suffer irreparable injury and damages in excess of \$1000.00 each if said violation continues and are without remedy except in a court of equity.

Wherefore, plaintiffs pray:

I. That defendants Orsel McGhee and Minnie S. McGhee, his wife, may full, true and perfect answer make to the matters herein stated and charged.

H. That a temporary injunction be issued by this Hon. [fol. 17] Court restraining defendants from using or occupying the property known as Lot No. 52 Seebaldt's Subdivision and commonly known as 4626 Seebaldt Avenue, or permitting said property to be used or occupied by any person or persons except those of the Caucasian race.

III. That upon the hearing of this cause that said temporary injunction be made permanent.

IV. That plaintiffs have such other, further or different relief as to the court shall seem just and proper.

Benjamin J. Sipes

Kathryn Lynn

Anna E. Sipes

Alvin C. Smith

James A. Coon

Lora D. McMurdy

Addie A. Coon

Herman Guse

Edward F. Secunda

August J. Becker

Anna L. Secunda

Her cross, (X) Anna Becker

C. James Donovan

Daniel J. Kuntz

Elizabeth Donovan

Carolyn Kuntz

William A. Kresin

George A. Strohmer

Freda A. Kresin

Gertrude T. Strohmer

Irene L. Stofflett

#### STATE OF MICHIGAN,

County of Wayne—ss.

On this 29th day of January, A. D. 1945, before me, a Notary Public in and for said County, personally appeared Benjamin J. Sipes, Anna E. Sipes, James A. Coon, Addie A. Coon, Edward F. Secunda, Anna L. Secunda, C. James Donovan, Elizabeth Donovan, William A. Kresin, Freda A. Kresin, Kathryn Lynn, Alvin C. Smith, Lora D. McMurdy, Herman Guse, August J. Becker, Anna Becker, [fol. 18] Daniel J. Kuntz, Carolyn Kuntz, George A. Strohmer, Gertrude T. Strohmer and Irene L. Stofflett, to me known to be the parties above named and who made oath that they had read the foregoing bill of complaint by them subscribed, that they knew the contents thereof and that the same is true of their own knowledge, except as to matters therein stated to be upon information and belief and as to such matters they believe it to be true.

Evelyn G. McCaske, Notary Public, Wayne County, Michigan.

My commission expires Dec. 12, 1947.

## [fol. 19] IN CIRCUIT COURT OF WAYNE COUNTY

## ANSWER TO BILL OF COMPLAINT—Filed February 16, 1945

Now come the defendants, Orsel McGhee and Minnie S. McGhee, his wife, by their attorneys, Willis M. Graves and Francis M. Dent, and saving and reserving unto themselves all manner of benefit of objection and exception to the many errors and inconsistencies in the Bill of Complaint contained, for answer thereto or such parts thereof as they are advised it is material or necessary to answer, say:

1. The defendants, not having sufficient knowledge of the allegations set forth in paragraph 1, of the Bill of Complaint, neither admit nor deny the said allegations but leave the plaintiffs to their proofs.
2. The defendants, not having sufficient knowledge of the allegations set forth in paragraph 2, of the Bill of Complaint, neither admit nor deny the said allegations but leave the plaintiffs to their proofs.
3. The defendants, not having sufficient knowledge of the allegations set forth in paragraph 3, of the Bill of Complaint, neither admit nor deny the said allegations but leave the plaintiffs to their proofs.
4. The defendants admit the ownership of Lot 52 of Seebaldt's Subdivision as alleged in paragraph 4 of the Bill of Complaint, but neither admit nor deny the remainder of said paragraph and leave the plaintiffs to their proofs.

[fol. 20] 5. The defendants deny that the restriction:

“This property shall not be used or occupied by any person or persons except those of the Caucasian race.”

as alleged in paragraph 5 of the Bill of Complaint, if valid, applies to them or their use of the property owned by them.

6. The defendants say in answer to paragraph 6 of the Bill of Complaint that they do not have sufficient knowledge of their ancestry to say to which race they belong, but leave the plaintiffs to their proofs and further the defendants will demand complete and absolute proof of those allegations.

7. In answering paragraph 7, of the Bill of Complaint, the defendants say that it contains nothing but conclusions

and therefore it is not subject to affirmation or denial except the allegations of moving into the house at 4626 Seebaldt Avenue and as to that allegation, they admit the same to be true.

8. The defendants say, in answer to paragraph 8 of the Bill of Complaint, that there is no connection between the allegations of the said paragraph 8 and the allegations of paragraph 5 of the Bill of Complaint and therefore unanswerable in that form except the portion that alleges "desirability and value" and as to that portion, the defendants neither affirm nor deny but leave the plaintiffs to their proofs.

9. In answering the paragraph 9 of the Bill of Complaint, the defendants state that persons, who are not known to them visited them on more than one occasion and talked about the neighborhood and threatened them if they did not accede to some unreasonable and unconsciousable requests, [fol. 21] and they now ask that if such persons are the plaintiffs herein that they be more particularly described so that the defendants can more fully answer the said paragraph.

10. The defendants deny that any violation of any agreement or contract made by them exists and that no injury or damage is caused by them to the plaintiffs.

Further answering the plaintiffs Bill of Complaint, the defendants say that the relief therein prayed cannot be granted because:

1. The Bill of Complaint does not give the court jurisdiction to hear and determine the matters therein alleged.

2. The relief therein prayed is directly against Section 16, Article II, and other sections of the Constitution of the State of Michigan.

The defendants say that the prayers of the said Bill of Complaint ought not to be granted and the said bill should be dismissed with costs to these defendants most wrongfully sustained.

Orsel McGhee, Minnie S. McGhee.

(Signed) Willis M. Graves, Francis M. Dent, Attorneys for Defendants. Business Address: 446 East Warren Avenue, Detroit 1, Michigan.

[fol. 22] *Duly sworn to by Orsel McGhee, and Minnie S. McGhee. Jurat omitted in printing.*

## [fol. 23] IN CIRCUIT COURT OF WAYNE COUNTY

## PLAINTIFFS' PRE-TRIAL STATEMENT—Filed April 5, 1945

It is hereby agreed between the plaintiffs and defendants herein, as follows:

1. Property on Seebaldt Avenue, between Firwood and Beechwood Avenue, in the City of Detroit, Wayne County, Michigan, consists of lots 36 to 71, both inclusive, of Seebaldt's Subdivision of part of Joseph Tireman's Estate, Quarter Sections 51 and 52, Ten Thousand Acre Tract and Fractional Section 3, Town 2 South, Range 11 East, according to the plat recorded in Liber 27 of Plats, page 34; and lots 188 to 205, both inclusive, of Brooks and Kingons Subdivision of part of Joseph Tireman's Estate, Quarter Sections 51 and 52, Ten Thousand Acre Tract and Fractional Section 3, Town 2 South, Range 11 East, according to the plat recorded in Liber 27 of Plats, page 32, Wayne County Records.

2. Plaintiffs own property in said block, as follows:

## In Seebaldt's Subdivision

Lot No.	Plaintiff	Deed Recorded in Liber at page
53	Benjamin J. Sipes and wife	4148 201
68	James A. Coon and wife	2376 183
45	Edward F. Secunda and wife	5901 159
49	C. James Donovan and wife	5375 274
69	William A. Kresin and wife	1296 56
54	Kathryn Lynn	4202 321
50	Alvin C. Smith	5293 275

## [fol. 24] In Brooks &amp; Kingons Subdivision

Lot No.	Plaintiff	Deed Recorded in Liber at page
193	Lora D. McMurdy	1367 475
196	Herman Guse	4224 61
195	August J. Becker and wife	6483 168
192	Daniel J. Kuntz and wife	1563 243
200	George A. Strohmer and wife	3888 63
199	Irene L. Stofflett	4750 440

3. Defendants own and occupy property in said block described as Lot 52, Seebaldt's Subdivision, by Warranty Deed from Walter A. Joachim and Helen M. Joachim, his wife, recorded in Liber 7284, at page 135. Walter A. Joachim and wife obtained their title by Warranty Deed from John C. Ferguson and Meda Ferguson, his wife, recorded in Liber 7284, at page 137. John C. Ferguson and wife executed the restriction described below and it is recorded in Liber 4505, at page 610.

4. Instruments similar in form, reciting:

"We, the undersigned, owners of the following described property, situate and being in the City of Detroit, Wayne County, Michigan, known and described as follows, to-wit: \* \* \* for the purpose of defining, recording and carrying out the general plan of developing the subdivision which has been uniformly recognized and followed, do hereby agree that the following restriction be imposed on our property above described to remain in force until January 1st, 1960, to run with the land, and to be binding on our heirs, executors and assigns."

"This property shall not be used or occupied by any person or persons except those of the Caucasian race."

[fol. 25] It is further agreed that this restriction shall not be effective unless at least eighty per cent of the property fronting on both sides of the street in the block where above property is located is subject to this or a similar restriction."

have been executed by owners of property in said block and are recorded as follows:

Seebaldt's Subdivision

Lot	Liber	Page	Lot	Liber	Page	Lot	Liber	Page
36	4505	587	49	4505	587	61	4505	587
37	4505	587	50	4505	561	62	4505	561
38	4505	609	51	None		63	None	
39	None		52	4505	610	64	4505	587
40	None		53	4505	587	65	6190	241
41	4505	587		6040	251	66	4505	587

## Seebaldt's Subdivision—Continued

Lot	Liber	Page	Lot	Liber	Page	Lot	Liber	Page
42	4505	561	54	4505	612	67	4505	587
43	4505	561	55	4505	587	68	4505	607
44	4505	561	56	4505	587	69	4505	561
45	4505	614	57	4505	587	70	4505	613
46	4505	561	58	4505	587	71	None	
47	4505	587	59	4505	587			
48	4505	561	60	4505	608			

## Brooks &amp; Kingons Subdivision

Lot	Liber	Page	Lot	Liber	Page	Lot	Liber	Page
188	4505	606	194	4505	585	200	4505	587
189	4505	606	195	6040	248		4505	585
190	4505	611	196	4505	585	201	7350	75
191	7358	134	197	7347	480		4505	585
192	4505	585	198	4505	585	202	4505	615
193	4505	585	199	4505	587	203	4505	585
	6020	19		7350	74	204	4505	585

[fol. 26] 5. All mention herein of liber and page of the recordings of all instruments are understood to refer to the records in the office of the Register of Deeds for Wayne County, Michigan, unless the context clearly indicates otherwise. All mention of "said block" is understood to refer to the block on Seebaldt Avenue, between Firwood and Beechwood Avenue, in the City of Detroit, Wayne County, Michigan.

Younglove and Chockley, Attorneys for Defendants.

[fol. 27] IN CIRCUIT COURT OF WAYNE COUNTY

**ORDER ALLOWING PLAINTIFFS' PRE-TRIAL STATEMENT TO BE  
FILED—April 4, 1945**

The court is advised by Mr. Chockley, attorney for plaintiff, that a copy of the annexed pre-trial statement has been submitted to the attorneys for the defendants, and that no amendments or corrections have been proposed. Mr. Chockley has been present in court all morning and defendants' attorneys have not appeared, although Mr. Chockley called their office. It is therefore, ordered that the annexed pre-trial statement be filed.

James E. Chenot, Circuit Judge.

## [fol. 28] IN CIRCUIT COURT OF WAYNE COUNTY

## DEFENDANT'S PRE-TRIAL STATEMENT

The defendants file herewith their objections to the proposed exhibits of the plaintiffs.

Defendants challenge legality of execution of following lots in accordance with Section 13284 and other sections of the Compiled Laws of the State of Michigan for the year 1929.

## In Seebaldt's Subdivision

Lot No.		Deed Recorded in Liber at Page
36 (N. 30')		4505 587
37		4505 587
41		4505 587
47		4505 587
49		4505 587
53		4505 587
56		4505 587
57		4505 587
59		4505 587
61		4505 587
66		4505 587
38	Executed by Executor without authority of Probate Court.	4505 587
68	Executed out of State and no certificate of court of record.	4505 587

## [fol. 29] In Brooks and Kingon's Subdivision

Lot No.		Deed Recorded in Liber at Page
192		4505 585
193		4505 585
194		4505 585
196		4505 585
200		4505 585
203		4505 585
204		4505 585
188 and 189	executed by officers of a corporation on behalf of corporation	4505 585

All libers and pages herein mentioned are found in the office of the Register of Deeds for Wayne County.

Willis M. Graves, Francis M. Dent, Attorneys for Defendants.

Business Address: 446 East Warren Avenue, Detroit 1,  
Michigan.

[fol. 30] IN CIRCUIT COURT OF WAYNE COUNTY

PRE-TRIAL STATEMENT OF COURT—April 19, 1945

This is a restriction case in which the plaintiffs seek to enforce restrictions:

"This property shall not be used or occupied by any person or persons except those of the Caucasian race."

The plaintiffs plant themselves primarily on a written restriction which includes a general plan, marked Pre-trial Exhibits 1 and 2 respectively.

Included and attached to this pre-trial statement is a list of lots covered by these agreements, the original of which are in the possession of the plaintiff and will be produced at the trial.

The defendants challenge the legality of certain of these agreements as contravening Sections 13284, 13332 to 13335, 13330 of Compiled Laws of 1929, a list of which they have submitted and is also attached to this pre-trial statement. Counsel for each side admit the correctness of the list as attached. The issue of the legality of these signatures and acknowledgements is of course an issue for the trial judge.

(Signed) I. W. Jayne, Circuit Judge.

[fol. 31] IN CIRCUIT COURT OF WAYNE COUNTY

AMENDED ANSWER TO BILL OF COMPLAINT—Filed May 29, 1945

Now come the defendants, Orsel McGhee and Minnie McGhee, his wife, by their attorneys, Willis M. Graves and Francis M. Dent, and file herewith an Amended Answer to the Bill of Complaint by adding to the general answers of the bill added paragraphs to be known as paragraphs 3, 4 and 5 of the general answer.

3. The restriction against occupancy based upon the race or color of the occupant is void under the 14th Amendment to the Federal Constitution.

4. The issuance of an injunction by this court, as prayed for, would enforce a restrictive covenant, and would prevent defendants from occupying their property, because of their race or color, and would therefore contravene the 14th Amendment to the Federal Constitution.

5. The restrictive covenant, relied upon by the plaintiffs, would prevent occupancy of the property because of the race or color of the occupant, and is therefore void as against public policy.

Willis M. Graves, Francis M. Dent.

[fol. 32] IN CIRCUIT COURT OF WAYNE COUNTY

Calendar No. 371-498

Settled Case on Appeal—Filed April 9, 1946

Proceedings had and testimony taken in the above entitled matter before the Honorable Guy A. Miller, Circuit Judge, at Detroit, Michigan, on May 28, 1945.

APPEARANCES:

Mr. Lloyd Chockley, appearing on behalf of the plaintiffs.  
Messrs F. M. Dent and Willis M. Graves, appearing on behalf of the defendants.

COLLOQUY

Mr. Chockley: This is a suit brought by some of the property owners on Seebaldt Avenue in the City of Detroit, for the purpose of enforcing a restriction which provides that no property in this block shall be used or occupied by any person other than that of the Caucasian race. It is the claim of the plaintiffs that this restriction has been violated by the defendant, Orsel McGhee and his wife who are of the colored race, and who have purchased and moved into this property contrary to the restrictions.

[fol. 33] Mr. Dent: I have a proposed amendment. I state the proposed amendment. It is to the effect that the re-

striction in question is a violation of the Fourteenth Amendment of the Constitution of the United States. Does counsel object to that amendment?

Mr. Chockley: No, it is perfectly all right.

Mr. Dent: We will file the written amendment in answer to that effect.

Mr. Chockley: I wish to offer this Exhibit No. 1, which is the Pre-Trial Statement which I prepared and filed in this court on April 3, which is a statement of the Public Records that we rely upon and a summary or synopsis of what they contain, which has not been denied under oath and which under Third Circuit Rule No. 14-b is admissible into evidence as proof of the facts therein stated.

(Plaintiff's Exhibit No. 1 received in evidence.)

I will also offer into evidence plaintiff's Exhibits 3 and 4. These are the two papers that were called into question on the Pre-Trial and are marked Pre-Trial Exhibit 1 and Pre-Trial Exhibit 2. Those were the ones you questioned at that time.

Mr. Dent: We object to their admission into evidence. Our claim is that they cannot be admitted into evidence under the statutes of the State.

The Court: They may be received and you may state your objections, but I would like to listen to the arguments when the case is in. I will admit them and whatever objections you make—we will argue out the objection when all the questions of law can be gathered up and argued at the same time.

(Plaintiff's Exhibits No. 3 and 4 received in evidence.)

[fol. 34] Mr. Dent: We claim this might decide the entire case because the restriction says that at least eighty per cent of the property owners on each side of the street must sign these agreements, and if under our contention, eighty per cent have not signed, then, that would conclude the case. That is, they have not been signed properly. As to that Lot 68 in Seebaldt Subdivision, it was executed in the State of Indiana and there is no certificate by the clerk of the court or by the Secretary of State that the Notary Public, who executed it, had authority to execute it on that date, and under the Section recited to the court, such an instrument may not be admitted into evidence.

Mr. Chockley: My answer to that objection is contained in the Statute, Michigan Statutes Annotated, Section 26.604., which says no such certificate is necessary.

Mr. Dent: No certificate of Notary Public as required by Statute. It should be in the form as the certificate by the County Clerk, who certifies thereto under his seal of office. That is the way the Statute reads and there is no certificate in that acknowledgment.

The Court: Well, it reads: "18 day of September, A. D. 1934, before me a Notary Public in and for said county, personally appeared James A. Coon and Addie Coon, to me known to be the same persons described in and who executed the within instrument who then severally acknowledged same to be their free act and deed. Dena P. Brickelle, Notary Public, St. Joseph County, Indiana. My commission expires 1-20-35." And impressed on it is a seal: "Notary Public, St. Joseph, County, Indiana." What should be there?

Mr. Dent: A certificate that he is a Notary Public in that county.

[fol. 35] The Court: He describes himself as a Notary Public and I don't think anything else is necessary. What are Exhibits 3 and 4?

Mr. Chockley: The Pre-Trial Exhibits that were offered on the Pre-Trial and the statement says that they should be produced and I am producing them in accordance with the agreement made at the Pre-Trial, although I don't think they are necessary to make out our case.

Mr. Dent: We have objections to those. As to Lot 38 of Seebaldt Subdivision, the restriction agreement was filed by an executor of an estate without authority from the Probate Court. We hold he had no right to do that.

The Court: I think he is right about that.

Mr. Chockley: I think he is right.

Mr. Dent: In Brooks-Kingon Subdivision, lots 188 and 189 the restriction agreement was executed by officers of a corporation—on behalf of the corporation. The acts of neither the United States Government or the State Government may put such restrictions on property. I think all the states in the country agree upon that. We claim that the state cannot create a corporation which can do something which the state itself cannot do. It was my thought that even though the people of the State of Michigan ordinarily tell the state that it may pass such resolutions, it

would still be declared unconstitutional by the Supreme Court of the United States. The state cannot go into this business under any circumstances and I don't see how they themselves, acting through any other of its authorities, that is the executive, judicial or legislative could authorize such a corporation—that is, authorizing a corporation to do such a thing.

The Court: But the Statute provides here on the "blank day of blank before me appeared AB, to me personally [fol. 36] known, by me being duly sworn did say that he is the President or other officer or agent and that the seal affixed to said instrument is the corporate seal of the said corporation that said instrument was signed and sealed in behalf of said corporation by authority of this Board of Directors and said AB acknowledged said instrument to be the free act and deed of this association." This form totally lacks the statement that these two parties are the officers and it makes no statement that the corporate seal is attached. As a matter of fact, there isn't any corporate seal attached and there lacks a statement that this is executed by authority of the Board of Directors. So, I don't think that instrument is entitled to record under our record laws. That is the ruling I am making. I don't think that instrument is notice to anyone because I don't think it is properly received for a record.

Mr. Dent: If the court will look at the instrument before it, it will see that there are a number of people who have signed and practically none of them on the same date. The acknowledgment does not state the people who appeared before him. It does not state what date and I think under these two sections that I have quoted to the court, these acknowledgments are not good. It does not show the people who appeared before him.

The Court: Well, Mr. Dent, opposite each name there is a date, for instance, February 26, 1934, and so on down the line, down to March 7, 1934, and the certificate of acknowledgment says, "Before me a Notary Public in and for said county, personally appeared each of the persons whose names are subscribed above, who respectively acknowledged that they signed same on the date appearing opposite their [fol. 37] names and severally acknowledged same to be their free act and deed." What is wrong with that?

Mr. Dent: We claim that does not comply with the Statute.

The Court: What would you have it do?

Mr. Dent: He should name the people who appeared before him in the certificate and the dates that they appeared before him in the Certificate. The certificate itself must bear a date and there is no date in the certificate.

The Court: You mean the certificate cannot refer to the dates set opposite to the names of the respective parties?

Mr. Dent: That is our contention.

The Court: On the face of the certificate that is a certificate that on the 20th day of February, 1934, Mabel S. Ball, owner of Lot 204, appeared before the Notary and executed it and acknowledged it.

SIPES, BENJAMIN J., one of the plaintiffs being first duly sworn testified as follows:

Direct examination.

By Mr. Chockley:

My name is Benjamin J. Sipes. I live at 4634 Seebaldt, and that is next door to the defendant, Mr. McGhee, and I have lived there approximately eighteen years. I own the house, and signed one of the restrictions, restricting the property against colored people. I have seen two sons and Mr. and Mrs. McGhee.

Mr. Chockley: Can you tell from looking at these people whether they are colored people or white people?

[fol. 38] Mr. Dent: If the court please, I must object to that. The only person qualified to testify as to race would be someone who is an expert in that field.

Mr. Chockley: If the court please, I don't believe that is true. I believe the man can testify in accordance with the average individual of ordinary intelligence that they can tell the difference between a white man and a negro, and I think he has a right to testify for whatever his testimony may be worth.

The Court: You may answer subject to objection.

Mr. Sipes: Colored people. During the eighteen or twenty years I lived in this house no colored people lived in this block or in the district north of Tireman and between Grand River on the east and Epworth Boulevard on the west and Joy Road on the north. If my memory serves me

correctly, I think it was in 1928 there was a doctor that moved in on Spokane—a colored doctor—and they got him out. He did not live there very long. I had talks with Mr. McGhee regarding this restriction. I presented a letter that I composed and a committee of taxpayers in the neighborhood got together and I composed this letter, and asked them if it was satisfactory to everybody concerned in this group and they said it was. We went into the house and I read the letter to Mr. McGhee.

(Whereupon, a document was marked Plaintiff's Exhibit 7 by the Reporter.)

Q. Tell us what you said to Mr. McGhee?

A. I says, "We are a group of taxpayers in the neighborhood, who are representing the Civic Association. We are a group and we are asking you to kindly vacate the property. We don't know if at the time you bought the property from [fol. 39] Larchmont to Joy Road it was restricted to the Caucasian only and we also wish to inform you that unless you vacate this—unless you move out, the Civic Association will take you to court."

Q. And what did Mr. McGhee say, if anything, in answer to that?

A. He just says, "Do you want to buy the property?" And I said, "That isn't for us to decide." He still lives there.

#### Cross-examination.

By Mr. Dent:

I changed my name in Probate Court on December 13, 1937, from Swipes to Sipes. I am buying the property on contract, and have been buying for approximately around eighteen years. At the time I signed this agreement I was buying on contract.

Mr. Dent: Will counsel bring in his land contract?

Mr. Chockley: I can't because he hasn't any, he has a deed, which is recorded in Liber 4148, Page 201.

Witness Continuing: There are colored and whites that live on Tireman, and at the time I signed the agreement here, colored people lived on the north side of Tireman, and they are living there now. I have seen Mr. McGhee, and he appears to have colored features. They are more darker than mine. I haven't got near enough to the man to recog-

nize his eyes. I have seen Mrs. McGhee, and she appears to be the mulatto type. Any white man to me is a Caucasian, and I haven't heard of any colored people who are Caucasians.

Mr. Dent: You are depending entirely upon this written restriction, is that true counsel?

Mr. Chockley: That is correct.

[fol. 40] Witness: I made the Mortgage to H. O. L. C., May 1, 1934.

Mr. Dent: We have a case in 298 Michigan 160.

The Court: The Court holds the mortgagor cannot decrease the title of mortgagee on property by entering into restrictive covenants like this and, therefore, as against the mortgagee that agreement is not binding and enforceable. We do not have enough facts here. Well, this agreement here, would create an encumbrance on the property which would be subsequent to and is subordinate to the bank's mortgage—the H. O. L. C. mortgage—and if that mortgage were to be foreclosed it would wipe out this agreement so far as he is concerned.

CHARLES R. ROBERT, called by plaintiffs being first duly sworn testified as follows:

Direct examination.

By Mr. Chockley:

My name is Charles R. Robert. I live at 4311 Seebaldt, and I am in the Real Estate Business, and have been since 1915. My office is now at 7539 Grand River, between Seebaldt and Allendale. I have seen the result of influx of colored people moving into a white neighborhood. There is a depression of values to start with, general run down of the neighborhood within a short time afterwards. I have, however, seen one exception. The colored people on Scotten, south of Tireman have kept up their property pretty good and enjoyed them. As a result of this particular family moving in the people in the section are rather panic-stricken and they are willing to sell—the only thing [fol. 41] that is keeping them from throwing their stuff on the market and giving it away is the fact that they think they can get one or two colored people in there out of there. My own sales have been affected by this family. Since the

fact got around there and it seems to have gotten around the northwest section that colored people are on Seebaldt, which is one of our nicest streets, and nine out of ten calls on the telephone—that, of course, is the section I operate in—they ask which side of Grand River it is on, and the south side is where the colored people are. Six or seven weeks ago I sold a house at 5673 Seebaldt and got a deposit one day and got the owner's acceptance in the evening and before I could deliver the owner's acceptance to the purchaser, he found out there was a colored family in the district and he called me and stopped the deal, and on the request of the Securities Commission, we returned the deposit. I am familiar with Seebaldt Avenue.

Q. Are there any other colored families that live on Seebaldt other than the Defendants in this case?

A. Not to my knowledge. I specialize in the section bounded by Underwood, Colfax, Dexter, Clairmont, down to the colored section of Tireman.

Q. So far as you know are there any colored people in that section other than the Defendants?

A. So far as I know, no.

#### Cross-examination.

By Mr. Dent:

Mr. Robert: There are colored people living on the north side of Tireman, and they have lived there for the last eight or ten years.

Q. Do you know anybody living there as long ago as 1928? [fol. 42] A. I never fooled with property with colored people, and I did not pay attention, but I think that was originally laid out as business property. Tireman is a business street.

The Court: Let me ask you. Do you understand that in the subdivision in the plat as it was originally dedicated, that Tireman Avenue is designated as a business street?

The Witness: Sir, I never searched the records and I don't know what it is.

The Court: Do you know if in the original dedication there was any restriction in the plat?

The Witness: I don't know.

By Mr. Dent:

Q. Can you name any new business on the north side of Tireman between Firwood and Beechwood or along the two or three blocks there?

(Exhibit 8, plat of Brooks & Kingon's Subdivision, and Exhibit 9, plat of Seebaldt's Subdivision, received in evidence.)

A. I believe there are some businesses—not on the north side—there are some on the south side.

Q. That would be out of the subdivision?

A. That is right.

Mr. Robert: I am familiar with the property at 4626 Seebaldt, and the value of it with a colored family in it is fifty-two hundred, and if there was no colored family in it I would say sixty-eight hundred. I would say seven thousand is a fair price for that property. Very often they put on more stamps than it is required in order to get more mortgage. The mortgage evaluators very often look at the deeds to find out how much stamps were put on and pay accordingly and I know of many cases that they put on three or four dollars more.

(Deed to Orsel McGhee and wife, Exhibit 10 admitted in evidence.)

[fol. 43] By Mr. Dent:

Q. After looking at the stamps on Exhibit 10, what would that indicate?

A. That the worth was over a fraction of seven thousand dollars.

Mr. Chockley: I wish to offer into evidence exhibits 11, 12, 13, and 14, which are four additional restrictions in this block which have been obtained since this case was started. They haven't been recorded.

Mr. Dent: If the Court please, these restrictions are all dated since this case has been started—the 23rd of April, 1945, and for that reason I don't think they are proper evidence as to whether there have been any violations. There was certainly no notice to Defendants in this case.

Mr. Chockley: This restriction reads that it will be valid when eighty per cent have signed and if—which I don't think is true—and if he buys without the eighty per cent

having signed, and it subsequently becomes eighty per cent, he knows that the restriction is pending and it is subject to be made valid by the addition of some more lots or property to that restriction, and for that reason it seems to be to me a proper method of showing the restrictions that are on. Those matters are all in the record. He knows when he takes it that when eighty per cent sign, that the property is restricted.

The Court: Irrespective of whether this particular lot 52 is restricted?

Mr. Chockley: Here is the restriction on lot 52, the lot in question.

(The Court excluded Exhibits 11, 12, 13, and 14.)

Mr. Dent: May I ask off the record as to whether counsel claims this Exhibit 15, is the birth certificate of Defendant? [fol. 44] Mr. Chockley: No, this is the birth certificate of Defendant's son.

Mr. Dent: May it please the Court, we object to the introduction of this because it is not the birth certificate of any of the parties to this suit.

The Court: I am assuming, of course, that is the birth certificate of a child of these two parties.

Mr. Dent: It does not show that. The party named is Orsel McGhee. The Defendant in this case. This shows the father is Oswald McGhee—

The Court: All right, but as a matter of fact the birth certificate is made evidence only for two reasons only. By the Statute it says: "Such certified copies shall be accepted in all courts and places as prima facie evidence of the date and birth of said child." And with that statutory authority I don't think such certified copies are evidence at all. Strictly reading the statute—as I think I got to—that is evidence that a child of the parents named on the certificate was named at a certain place and at a certain time and that is all it is evidence of. The statute, Mr. Chockley, says, "Such certified copy shall be accepted as prima facie evidence of the date and place of birth of said child." That is the only purpose for which the statute make them acceptable.

Mr. Dent: The exhibit that the Court has before it, the Court will notice that the name of either Defendants of this suit, Orsel McGhee or Minnie McGhee are not on it. They are different names altogether.

Mr. Chockley: Mr. Dent, is Mr. McGhee in the court-room?

Mr. Dent: No, he is not.

Mr. Chockley: Do you expect to produce him?

Mr. Dent: At present, we don't.

The Court: While there are a lot of things on here that [fol. 45] are purely hearsay, such as, for example, the ages, the birthplace, the occupation, the number of other children and so on, it may be admitted for the purpose of showing the date and place of birth and the names of the parents, which is as far as you can stretch the statute.

(Plaintiff's Exhibit 15 admitted into evidence.)

Mr. Chockley: I will now offer Plaintiff's Exhibit 16, the affidavit for license to marry.

Mr. Dent: I think Mr. Graves would like to see it. May it please the Court, I don't know what counsel wants to prove by this—that the people in this exhibit are the Defendants in this case or not? In case that is the purpose, I don't believe that this is a proper way to prove it. I have no objection to having it admitted for what it shows on the face, but not to show that it has anything to do with the defendants in this case.

The Court: It may be received.

(Plaintiff's Exhibit 16 received in evidence.)

Mr. Chockley: That is plaintiff's case.

DR. NORMAN D. HUMPHREY, called by Defendants being first duly sworn testified as follows:

Direct examination.

By Mr. Dent:

My name is Norman D. Humphrey. I live in the City of Detroit. I am Professor of Sociology and Anthropology at Wayne University, or Assistant Professor. I got my Bachelor of Arts degree at the University of Michigan, Master of Arts degree of Anthropology at the University of Michigan, Master of Sociology degree at the University [fol. 46] Institute of Social and Public Administration, Doctor of Philosophy degree at University of Michigan. I

have written a number of articles in the anthropological journals. I belong to the American Sociological Society and the Alpha Kappa Delta, which is a sociological society.

Mr. Dent: Mr. Chockley, would you want to ask the doctor any questions as to his qualifications as an expert in anthropology.

Mr. Chockley: I have no questions.

By Mr. Dent:

Q. In anthropology, doctor, how many races of mankind are there?

A. The most common conception is that all mankind consists of the same genesis and species, namely Homo sapiens, and within that group there are three major races and stocks, Mongoloid, Caucasoid, and Negroid.

Q. Is there any particular way that you can determine whether a man is a member of one of those three classifications?

A. There isn't any simple one, single criterion of membership.

— How do you determine the particular race of any particular person?

A. In order to approach knowing what racial derivative a person possesses, one would proceed to measure a number of known points by means of calibers and develop their relation, that is, measurements to certain averages which have been worked out and then work out from the measurements, ratios of indexes or measurement and relate those in turn into average indigenous, and he would also, probably, observe further mortal observations.

The Court: I don't follow you. You are using a lot of words that I cannot know what you mean.

The Witness: Structural features such as the eyefold, [fol. 47] degree of freeness in the upper lid which isn't subject to measurement, but which is subject to observation. The shape of the nose and that sort of thing, which is both subject to measurement and observation.

By Mr. Dent:

Q. Professor, did you or would say that looking at an ordinary person you could tell which of the three races he belonged to?

A. Only insofar as you approach the ideal types of each of these categories.

Q. Would you say, in your opinion, the average layman could look at a person and tell what racial qualifications—or racial classification they should be put under?

A. I should say, no, because I think the average person is unfamiliar with the anthropological scientific determination of racial stocks.

The Court: That ending "oid" has the general meaning of being predominantly of the given characteristic?

The Witness: Yes, sir.

By Mr. Dent:

Q. Would you say there are any pure Caucasoid, Mongoloid or Negroids?

A. Well, it would be very difficult to say whether a person would be a pure Mongoloid, Negroid, or Caucasoid. The anthropologists assume that at one time isolated groups inbred—certain physical types predominant for this particular inbred group. However, there has been shown from examinations of skeleton material from even Paleolithic have in Europe—the last Ice Age in Europe—there is evidence of admixture of the so-called Neanderthal skeletons—the Neanderthal skeletons from Palestine are deviated from the anthropology in France and Germany, and it would appear, or at least it is induced that admixture took place at this time.

Q. On the question of color, white, brown, black, or [fol. 48] yellow, would that determine necessarily whether a person was Caucasoid, Negroid, or Mongoloid?

A. No, sir, it would not determine necessarily whether he were one or the other because skin color has been shown to be a very poor index because it is not well correlated with other features.

Q. Do you know of any dark Caucasoids?

A. Yes, sir, I do.

Q. Will you give us an example of that?

A. Well, the average native of India whether he be a Moslem or a Hindu in religion.

Q. Are classified as Caucasoids?

A. Yes, sir.

Q. Do you know any light or white Negroids?

A. Yes, sir, I know of people who are called Negroids

who are light in skin coloring, and it is also a possibility for an albino to be in any one of the several racial groups.

Cross-examination.

By Mr. Chockley:

Q. Doctor, the approach that you have testified to here, has been the purely scientific and academic approach, has it not?

A. It has been the scientific and academic approach, yes, sir.

Q. In other words, you are not testifying to the popular concepts of these things, you are testifying solely as to the academic concepts?

A. Yes, sir.

Q. In just ordinary language that the man in the street uses, what does the Negroid consist of? What is the common word for that?

[fol. 49] A. The average person in the street calls it "nigger" and spells it with two "g's".

Q. What is the Mongoloid? What is the term for that?

A. Again, the man in the street uses variable language—He may use Mongolian.

Q. And the Caucasoid, what is the common word for that?

A. Well, the commonly used term is the white race, so to speak, but actually there is a variance here between the man in the streets usage of the term and the anthropologists', just as there is a difference between the chemist—

Q. I understand, but I am talking about common, ordinary meaning of the man on the street—the Negroids are known as the black race?

A. That is right, but I am not competent to talk about the language of the man on the street because it is an ambiguous language.

Q. I grant you that, but generally speaking, the Negroid is the black race?

A. It is commonly felt that Negroids are black.

Q. Isn't it a fact that they are commonly called black?

A. Commonly—to me they would be more brown than black.

Q. Or black or brown; but the Mongolians or Mongoloids are talked of by the ordinary people as a yellow race?

A. In some references, yes, and in some references, no.

Q. They are talked about commonly in ordinary language as the "Yellow Race", isn't that so?

A. Yes, sir.

Q. And the Caucasoid is what is commonly considered to be the white race?

A. Yes, sir.

[fol. 50] MELVIN TUMIN, called by Defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Dent:

My name is Melvin Tumin. I am a resident of the City of Detroit and an instructor of Sociology and Anthropology at Wayne University. I had my B.A., at Wisconsin, my M.A. at the University of Wisconsin and my Ph.D., at Northwestern in Sociology and Anthropology.

By Mr. Dent:

Q. Doctor, you have heard the testimony of Dr. Humphrey, do you agree with his testimony?

A. Yes, sir.

Q. Is there any place that you disagree with his testimony?

A. I can't think of any substantial disagreements.

Mr. Dent: That is the defendants' case. The defense rests.

[fol. 51]

## EXHIBIT 1.

Plaintiffs' Pre-Trial Statement—Filed April 4, 1945

**STATE OF MICHIGAN,**In the Circuit Court for the County of Wayne, In  
Chancery.

No. 371,498

**BENJAMIN J. SIPES, et al., Plaintiffs,**

vs.

**ORSEL McGHEE, et al., Defendants**

It is hereby agreed between the plaintiffs and defendants herein, as follows:

1. Property on Seebaldt Avenue, between Firwood and Beechwood Avenue, in the City of Detroit, Wayne County, Michigan, consists of lots 36 to 71, both inclusive, of Seebaldt's Subdivision of part of Joseph Tireman's Estate, Quarter Sections 51 and 52, Ten Thousand Acre Tract and Fractional Section 3, Town 2 South, Range 11 East, according to the plat recorded in Liber 27 of Plats, page 34, and lots 188 to 205, both inclusive, of Brooks and Kingons Subdivision of part of Joseph Tireman's Estate, Quarter Sections 51, and 52, Ten Thousand Acre Tract and Fractional Section 3, Town 2 South Range 11 East, according to the plat recorded in Liber 27 of Plats, page 32, Wayne County Records.

2. Plaintiffs own property in said block, as follows:

[fol. 52]

In Seebaldt's Subdivision

Lot No.	Plaintiff	Deed Recorded in Liber at page
53	Benjamin J. Sipes and wife	4148 201
68	James A. Coon and wife	2376 183
45	Edward F. Secunda and wife	5901 159
49	C. James Donovan and wife	5375 274
69	William A. Kresin and wife	1296 56
54	Kathryn Lynn	4202 321
50	Alvin C. Smith	5293 275

**In Brooks & Kingons Subdivision**

Lot No.	Plaintiff	Deed Recorded in Liber at page	
193	Lora D. McMurdy	1367	475
196	Herman Guse	4224	61
195	August J. Becker and wife	6483	168
192	Daniel J. Kuntz and wife	1563	243
200	George A. Strohnier and wife	3888	63
199	Irene L. Stofflett	4750	440

3. Defendants own and occupy property in said block described as Lot 52, Seebaldt's Subdivision, by Warranty Deed from Walter A. Joachim and Helen M. Joachim, his wife, recorded in Liber 7284, at page 135. Walter A. Joachim and wife obtained their title by Warranty Deed from John C. Ferguson and Meda Ferguson, his wife, recorded in Liber 7284, at page 137. John C. Ferguson and wife executed the restriction described below and it is recorded in Liber 4505, at page 610.

4. Instruments similar in form, reciting:

"We, the undersigned, owners of the following described property, situate and being in the City of Detroit, Wayne County, Michigan, known and described [fol. 53] as follows, to-wit: \* \* \* for the purpose of defining, recording and carrying out the general plan of developing the subdivision which has been uniformly recognized and followed, do hereby agree that the following restriction be imposed on our property above described to remain in force until January 1st, 1960, to run with the land, and to be binding on our heirs, executors and assigns:

"This property shall not be used or occupied by any person or persons except those of the Caucasian race."

It is further agreed that this restriction shall not be effective unless at least eighty per cent of the property fronting on both sides of the street in the block where above property is located is subject to this or a similar restriction."

have been executed by owners of property in said block and are recorded as follows:

Seebaldt's Subdivision

Lot	Liber	Page	Lot	Liber	Page	Lot	Liber	Page
36	4505	587	49	4505	587	61	4505	587
37	4505	587	50	4505	561	62	4505	561
38	4505	609	51	None		63	None	
39	None		52	4505	610	64	4505	587
40	None		53	4505	587	65	6190	241
41	4505	587		6040	251	66	4505	587
42	4505	561	54	4505	612	67	4505	587
43	4505	561	55	4505	587	68	4505	607
44	4505	561	56	4505	587	69	4505	561
45	4505	614	57	4505	587	70	4505	613
46	4505	561	58	4505	587	71	None	
47	4505	587	59	4505	587			
48	4505	561	60	4505	608			

[fol. 54]

Brooks & Kingons Subdivision

Lot	Liber	Page	Lot	Liber	Page	Lot	Liber	Page
188	4505	606	194	4505	585	200	4505	587
189	4505	606	195	6040	248		4505	585
190	4505	611	196	4505	585	201	7350	75
191	7358	134	197	7347	480		4505	585
192	4505	585	198	4505	585	202	4505	615
193	4505	585	199	4505	587	203	4505	585
	6020	19		7350	74	240	4505	585

5. All mention herein of liber and page of the recordings of all instruments are understood to refer to the records in the office of the Register of Deeds for Wayne County, Michigan, unless the context clearly indicates otherwise. All mention of "said block" is understood to refer to the block on Seebaldt Avenue, between Firwood and Beechwood Avenue, in the City of Detroit, Wayne County, Michigan.

Younglove and Chockley, Attorneys for Defendants.

[fol. 55]

**EXHIBIT 2****DEFENDANTS' PRE-TRIAL STATEMENT**

**IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE, STATE OF MICHIGAN, IN CHANCERY.**

**Calendar No. 371,498**

**BENJAMIN J. SIPES, et al., Plaintiffs,**

v.

**ORSEL McGHEE, et al., Defendants**

The defendants file herewith their objections to the proposed exhibits of the plaintiffs.

Defendants challenge legality of execution of following lots in accordance with Section 13284 and other sections of the Compiled Laws of the State of Michigan for the year 1929.

**In Seebaldt's Subdivision**

**Deed Recorded in  
Liber at Page**

<b>Lot No.</b>				
36 (N: 30')		4505	587	
37		4505	587	
41		4505	587	
47		4505	587	
49		4505	587	
[fol. 56]				
53		4505	587	
56		4505	587	
57		4505	587	
59		4505	587	
61		4505	587	
66		4505	587	
38	Executed by Executor without authority of Probate Court	4505	587	
68	Executed out of State and no certificate of court of record	4505	587	

## In Brooks and Kingon's Subdivision

Lot No.

Deed recorded in  
Liber at Page.

192	4505	585
193	4505	585
194	4505	585
196	4505	585
200	4505	585
203	4505	585
204	4505	585
188	4505	585

and 189 executed by officers of  
a corporation on behalf of  
corporation

[fol. 57] All libers and pages herein mentioned are found  
in the office of the Register of Deeds for Wayne County.

Willis M. Graves, Francis M. Dent, Attorneys for  
Defendants.

Business Address: 446 East Warren Avenue, Detroit 1,  
Michigan.

✓ Exhibits 3 and 4

11527-14505 rev 5N5

1/2  
SEP 7 1950 R/L RENA

HAROLD E. STOLL, OWNER

To, the undersigned, owners of property in the following subdivision:

Brooks and Kingson Sub. of part of  
Joseph Tirecarr Est. 1/4 Secs. 3, 4  
S. 10000 A. T. and N 1/4 Sec. 3,  
T 8 S R 11 E.

for the purpose of defining, recording and carrying out the general plan of developing the subdivision which has been uniformly recognized and followed, do hereby agree with each other that the following restriction be imposed on our property in said subdivision, to remain in force until January 1st, 1960, to run from the same and to be binding on our heirs, executors and administrators:

"This property shall not be used or occupied by any person or persons except those of the Caucasian race."

It is further agreed that this restriction shall not be effective unless at least eighty percent of the property fronting on both sides of the street in the block where our land is located is subjected to this or a similar restriction.

IN WITNESS WHEREOF we have hereunto signed our names on the date following our respective signatures.

John Richard Act No.

<u>George Richard</u>	<u>Act No.</u>	<u>Act No.</u>
<u>Wm. George Richard</u>	<u>Act No.</u>	<u>Act No.</u>
<u>Robert Richard</u>	<u>Act No.</u>	<u>Act No.</u>
<u>Robert Richard</u>	<u>Act No.</u>	<u>Act No.</u>

## Exhibits 3 and 4

(Continued)

• 4505 rev 586

## Additional Entry

Agreement regarding restriction on Breaks and Bridges that

"This property shall not be used or occupied by any person or persons except those of the Caucasian race."

NAME	LOT #	DATE
Dorothy Gandy	192	2/20/34
Carolyn T. Keat	192	2/20/34
Mabel & Bill	204	2/21/34
Tyle & Burnett	203	2/20/34
Elizabeth A. Burnett	203	2/20/34
Marie L. Lorraine	194	2/20/34
Lionel & M. Ward	193	2/21/34
George A. McWayne	193	2/21/34
Leonard J. War	96	2/21/34
William & Lorraine	96	2/21/34
George J. Rothmeyer	200	3-6-34
Estelle J. Rothmeyer	200	3-19-34
W. B. & Mary		3-7-34
Carrie A. Roberts		3-7-34

State of Michigan  
County of Wayne  
Before me a Notary Public, in and for said county, notarially appeared each of the persons whose names are subscribed above, who respectively acknowledge that they signed the same on the date and that they are the persons who are now acknowledged to be their true signatures.

Notary Public - Wayne County - Mich.  
Commission expires Jan 10, 1937.

## Exhibits 3 and 4

(Continued)

*3<sup>rd</sup> Clerk on Rebalt/Thom property to  
 EXH SLP 7 103411<sup>12</sup> ~~replies~~ n/s Bachelor  
 HAROLD E STOLL, REMITTER 54-71-1/s REC 3505 no 587  
 114524*

We, the undersigned, owners of property in the following subdivision:

WARD NO. 14 CAP NO. 10  
 Subdivision Sub No. part of lot No. ~~100000~~ Sub  
 Bl. Sect. No. 11 & 12 REC'D. & L. REC'D. REC'D.  
 650000000000

for the purpose of sale, etc., recording and carrying out the general plan of development of our union has been uniformly recognized and followed, do hereby agree with each other that the following restriction be imposed on our property in said subdivision, to remain in force until January 1st, 1980, to run with the land and to be binding on our heirs, executors and assigns:

"This property shall not be used or occupied by any person or persons except those of the Caucasian Race."

It is further agreed that this restriction shall not be effective unless at least eighty percent of the property fronting on both sides of the street in the block where our land is located is subjected to this or a similar restriction.

IN WITNESS WHEREOF we have hereunto signed our names on the date following our respective signatures.

*John W. Johnson* *W. W. Johnson*  
John W. Johnson W. W. Johnson  
 President of Owners 55

*John W. Johnson* *W. W. Johnson*  
John W. Johnson W. W. Johnson  
 Sec. 36 - 1734

~~Exhibits 3 and 4~~

(Continued)

4505-588

~~MISCELLANEOUS~~Agreement regarding restriction on Boehm's Subdivision.that of 1/2 of Joseph Bohem's Lot. # 300, Bl. 121 10.00 A. C.  
and Pr. 1, Sec. 3 T. 8 S.D. 335."This property shall not be used or occupied by any person or  
persons except those of the Caucasian race".

<u>NAME</u>	<u>AGE</u>	<u>DATE</u>
<u>John Fiedorowicz</u>	56	<u>2/26/34</u>
<u>Edgar Duerksen</u>	41	<u>3/21/34</u>
<u>Henry Derman</u>	41	<u>3/2 - 35</u>
<u>Edward L Krehl</u>	49	<u>3/21/34</u>
<u>Doris Krehl</u>	40	<u>3/21/34</u>
<u>Ethel Derssen</u>	55	<u>5/1/34</u>
<u>Habert Kress</u>	47	<u>May 18<sup>th</sup> 34</u>
<u>Wm. Kress</u>	47	<u>July 15<sup>th</sup> 34</u>
<u>Oscar L Scott</u>	57	<u>May 18<sup>th</sup> 34</u>
<u>Pauline G. Beusterren</u>	45	<u>May 17 1934</u>
<u>Emma J. Ziegler</u>	61	<u>May 26 34</u>
<u>Ed. Wamie</u>	66	<u>July 31 1934</u>
<u>Harold Harris</u>	66	<u>July 31 1934</u>
<u>Benjamin Swigart</u>	53	<u>Sept. 28 1934</u>
<u>Arnold Surges</u>	53	<u>Sept. 28 1934</u>

~~Tables 3 and 4~~~~(Continued)~~

1900-1901

Agreement re. selling real property

that

"This property shall not be used for any purpose except that of the City of ..."

NAME

• 100-100

DATE

Sarah L. French \_\_\_\_\_ 1900-1901

Lorraine, 1900-1901

1900-1901

1900-1901

Sarah L. French 1900-1901

1900-1901

1900-1901

1900-1901

1900-1901

1900-1901

1900-1901

1900-1901

1900-1901

1900-1901

1900-1901

1900-1901

## Exhibits 3 and 4

(Continued)

~~AB 4505 REC 610 1936 116 JEWELL~~

HAROLD E. STOLL, Register (145204)  
 We, the undersigned, owners of the following described property:

AB 4505 REC 610 1936 116 JEWELL  
 Section 52 Bechdale Sub. of Part of  
 South Division, Sec. 1/4 Sec. 61 & 62  
 10,000 ft<sup>2</sup> and 77' x 80' S. E. S. R. 11th.

for the purpose of defining, recording, and carrying out the general plan of development in the subdivision which has been uniformly recognized and followed, do hereby agree that the following restriction be imposed on our property above described, to remain in force until January 1st, 1930 - to run with the land, and to be binding on our heirs, executors, and assigns:

"This property shall not be used or occupied by any person or persons except those of the Caucasian race."

It is further agreed that this restriction shall not be effective unless at least eighty percent of the property fronting on both sides of the street in the block where our land is located is subjected to this or a similar restriction.

IN WITNESS WHEREOF we have hereunto set our hands and seals this 20th day of June A. D. 1934.

Signed, sealed, and delivered in presence of: John C. Ferguson

M. May C. Ferguson Evelyn Ferguson

In Canton Michigan

STATE OF Michigan

COUNTY OF Wayne, MI

On this 20 day of June A. D. 1934,  
 before me, a Notary Public in and for said County,  
 personally appeared

John C. Ferguson and Evelyn Ferguson,

to whom it is the same persons described in and who  
 executed the instrument - in their severally  
 capacities, the same to be their free act and deed.

Ray C. Ferguson  
 Notary Public

Ray C. Ferguson  
 County, MI

Commission ex. recd. Feb. 5 1936.

# BROOKS & KINGONS SUB.

OF

HART & JOSEPH TIREMANS ESTATE  $\frac{1}{4}$  SECTION N<sup>o</sup> 51552  
10,000 AT<sup>4</sup>, FRACTIONAL, SECTION 3 - T25R11E  
DETROIT, WAYNE CO., MICHIGAN.

ALL ENCLAVE AVE	NET 60 FT WIDE	5	Northw.
SEEBALDT AVE	N 65° 17' E	60 FT WIDE	
LARCHMENT AVE	N 65° 17' E	60 FT WIDE	
FRUITWOOD AVE	N 65° 17' E	60 FT WIDE	
		66 FEET DEEP	

65

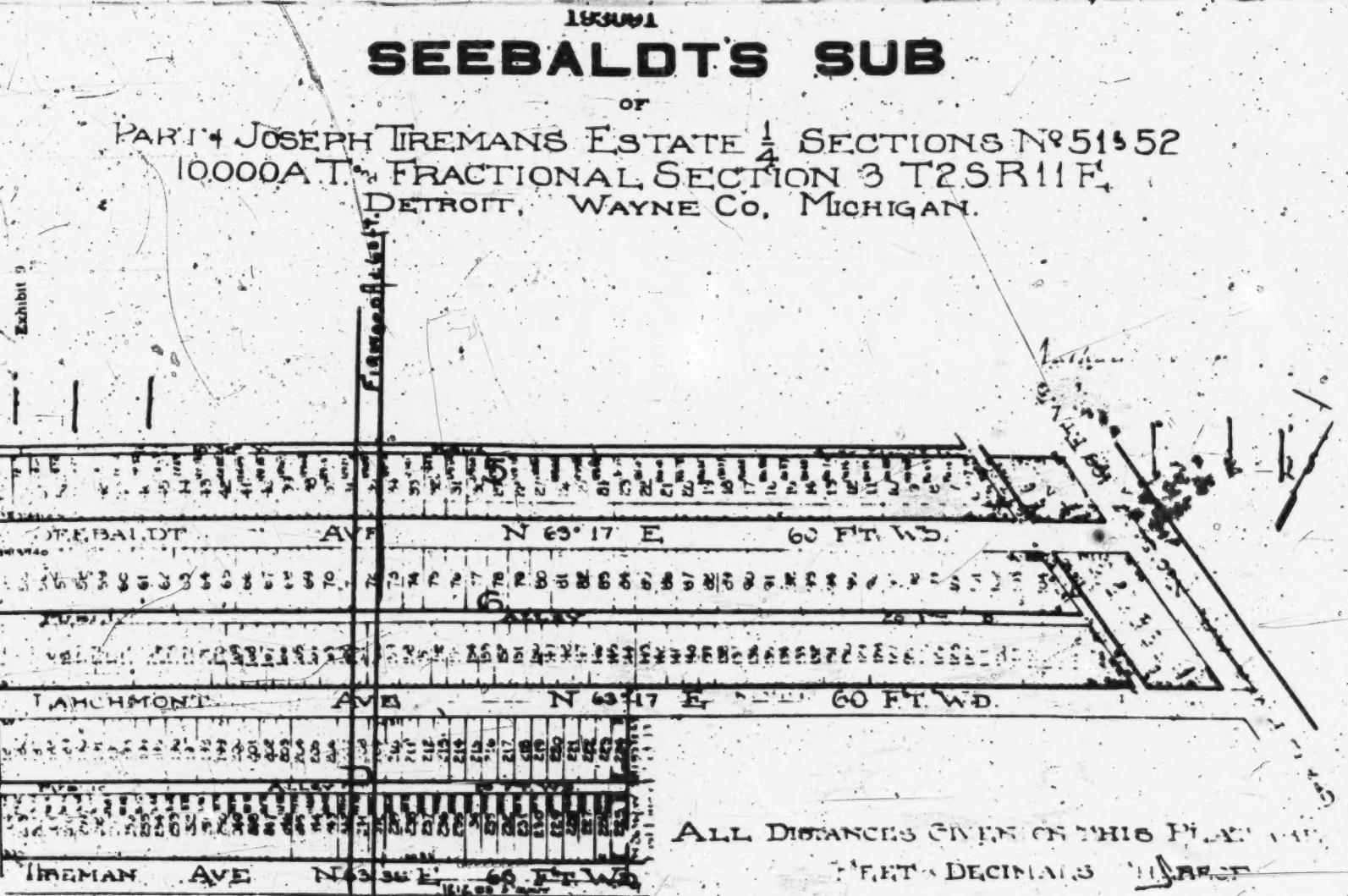


Exhibit 10

C803559

100-74074 FILED 1950  
100-7286 REC'D 35

American and Old Colony Company

WARRANTY DEED

**This Indenture**, made this 30th day of

November, in the year of our Lord one thousand nine hundred and forty four,

between Walter A. Joachim and Helen M. Joachim, his wife,

of 4826 Seehaldt Avenue, Detroit, Wayne County, Michigan,

parties of the first part,

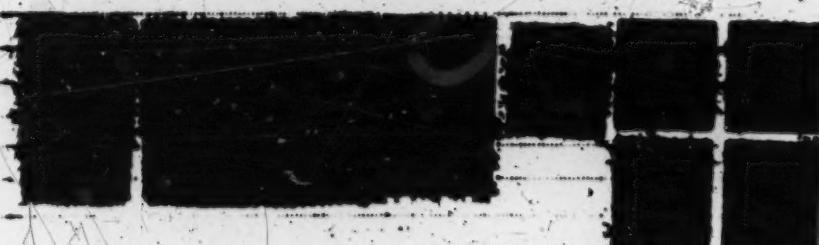
and Great Ma Ghee and Minnie S. Ma Ghee, his wife

of 6246 Irvinwood Avenue - Detroit, Wayne County, Michigan, parties of the second part,

REND J. THORNBLOOD, Sheriff of Wayne County, Michigan

Witnesseth, that the said parties of the first part, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged and acknowledged, do by these presents, grant, bargain, sell, remise, release, alien and convey unto said parties of the second part, and to their heirs and assigns, forever, all that certain place or places of land situate and being in the City of Detroit, county of Wayne, and state of Michigan,

and described as follows: Lot Fifty-Two, (52), of Seehaldt's Subdivision part of Joseph Tishman's Estate, quarter section No. Fifty-One (51) and Fifty-Two (52), ten thousand (10,000) acre tract and fractional section three (3), town Two (2) south, range Eleven (11) east, according to the plat thereof recorded in Liber Twenty Seven (27) of plats on page Thirty Four (34), Wayne County Records, and more commonly known as number 4826 Seehaldt Avenue, Detroit, Michigan.



DEC 1 1944

JNET

Together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining; To have and to hold the said premises, as herein described, with the appurtenances unto the said party of the second part, and to their heirs and assigns, forever; and the said Walter A. Joachim and Helen M. Joachim, his wife, parties of the first part and their heirs, executors and administrators do covenant, grant, bargain and agree to and with the said parties of the second part, heirs and assigns, that at the time of the concluding and delivery of these presents they are in receipt of the above-granted premises in fee simple; that they are free from all incumbrances whatever, save such as are excepted from the covenant following, and that they will and shall

Exhibit 10

(Continued)

7284 art 38

holders, successors, \_\_\_\_\_ assignees \_\_\_\_\_ shall waive and release the right  
against all third parties whatsoever, except \_\_\_\_\_  
Subject to existing restrictions as of record.

In witness whereof the said parties of the first part have hereunto set their hand & and  
their <sup>and</sup> the day and year first above written.

Signed, sealed and delivered in presence of

John W. Williams

Walter A. Joachim (2)

Helen M. Joachim 2)

(L 3.)

State of Michigan,  
County of Wayne

On this - 2011 day of November

in the year one thousand nine hundred and forty four before me,  
a Notary Public, in and for said county, personally appeared Walter A. Joeschim and  
Helen M. Joeschim, his wife,

to me known to be the same person. It contained a  
then acknowledged the note to be John H. Smith.

My conclusion would be ~~that~~ ~~not~~ ~~any~~ ~~more~~

~~Henry Price~~ ~~Young~~ County, Michigan.

ה'ז

—四二一 一九四〇年十一月

3559

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RECEIVED  
THE COUNTY MICH.  
MAY 1 1960

SOCIETY 67

Weyer County  
The location was given  
as about 1 mile west of Rosedale, on  
the road to Rosedale. A road  
leads from the main road to the  
location. The location is about  
1/2 mile west of Rosedale. The  
location is about 1/2 mile west of Rosedale.  
On the road  
and the place  
is about 1/2 mile west of Rosedale.

**MICROCARD** TRADE MARK **R** **21**

**H  
O  
N**



**C  
O  
M**



## Exhibit 15

DISTRICT DEPARTMENT OF HEALTH  
Division of Vital Statistics

PLACE OF BIRTH  
County of Wayne

MICHIGAN  
DEPARTMENT OF HEALTH  
Division of Vital Statistics

Transcript of CERTIFICATE OF BIRTH  
Date of Birth: May 12, 1947 Registered No. 2471  
(Day) (Month) (Year)

Sex of child: <u>M</u>	Date of birth of mother: or delivery: <u>1942</u>	and	Number of previous children: <u>1</u>	Length of gestation: <u>40</u>	Date of birth: <u>5-12-47</u> (Month) (Day) (Year)
Name: <u>Donald M. Tamm</u>		Name: <u>Willa Tamm</u>		Name: <u>MOTHER</u>	
Residence (P.O. Address): <u>1424</u>		Residence (P.O. Address): <u>1424</u>		Residence (P.O. Address): <u>Same</u>	
Color or Race: <u>White</u>	Age at time of birth: <u>27</u>	Color or Race: <u>White</u>	Age at time of birth: <u>24</u>	Color or Race: <u>White</u>	Age at time of birth: <u>24</u>
Birthplace: <u>U.S.A.</u>		Birthplace: <u>U.S.A.</u>		Birthplace: <u>U.S.A.</u>	
Occupation (And Industry): <u>Amotor</u>		Occupation (And Industry):		Occupation (And Industry): <u>Same</u>	

Number of child of this mother: 2 Number of children, of this mother, now living: 2

## CERTIFICATE OF ATTENDING PHYSICIAN OR MIDWIFE

I hereby certify that I attended the birth of this child, who was born on the date above stated.

Birthplace of child has remained with me or was admitted to other persons as recommended by law.

Given or dictated name added from a supplemental report: None

Are there any entries contradicted or deleted?

(Signature)

Dated

Address

File

J. T. Tamm

Dated: 12-24-47

Address:

File: 12-24-47

Signature:

I hereby certify that the foregoing is a true copy of the record on file in the Detroit Department of Health

R. W. Blattner  
Commissioner of Health

R. W. Blattner  
Chief Registrar, Vital Statistics

Exhibit 10

PL Exp 16  
5-29-45  
2H

## STATE OF MICHIGAN

## AFFIDAVIT FOR LICENSE TO MARRY

STATE OF MICHIGAN

COUNTY OF WAYNE

*Evelyn McElroy* an applicant for a license for marriage between  
 - wife and *Byrone Leatherman* being duly sworn, deposes and says

I am acquainted with the laws of Michigan relative to marriage, as printed upon the  
 back of this blank; that there is no legal impediment to the marriage of my wife and the other person named; and  
 that to the best of my knowledge and belief the following statements are true:

**MATERIAL**  
 Name *CARSEL MC 6-H85*  
 Age at last birthday *39*  
 Color *Colored*  
 Address *8346 11th Street*  
 Religion *Episcopalian*  
 Father's name *Starker*  
 Mother's name *CARSEL*  
 Mother's maiden name *GILA HENRICKSEN*  
 Number of times previously married *One*

**FEMALE**  
 Full name *Lorraine LEATHERMAN*  
 Age at last birthday *30*  
 Color *Colored*  
 Address *4530 - 261*  
 Birthplace *Pa*  
 Occupation *Housewife*  
 Father's name *James S. MHS*  
 Mother's maiden name *Louie Thornton*  
 Number of times previously married *One*  
 Mother's name of bride & wife *Louie*  
*Carlene*

Sworn and subscribed to before me, a Notary Public

Wayne County, Michigan, this

day of *18* day of *July*My commission expires *JUN 25 1941*

## EXHIBIT 17

## CERTIFIED COPY OF RECORD OF MARRIAGE

MICHIGAN STATE



## CERTIFIED COPY OF RECORD OF MARRIAGE

No. 494151

## MALE

Full Name..... OREEL MC OMES  
 Age... 23 Color.... White  
 Residence..... Detroit, Mich.  
 Birthplace..... Ala.  
 Occupation..... Elev. Starter  
 Father's Name..... Israel  
 Mother's Name..... Ella Merriveweth  
 Number of times previously married..... No

## FEMALE

Full Name..... DOREE DIPAYA  
 Age... 23 Color.... White  
 Residence..... Detroit, Mich.  
 Birthplace..... Ala.  
 Occupation..... S. Teacher  
 Father's Name..... Joseph  
 Mother's Name..... Ellen  
 Number of times previously married..... No

The parties above named were joined in matrimony by ..... A. Leoncavat.....  
 Minister..... DIPAYA..... Michigan, on... 11th.....  
 day of..... July..... A. D. 1942, in the presence of  
 Alf. E. Thomas..... of..... Detroit, Mich.  
 Almina Carnis..... of..... Detroit, Mich.

STATE OF MICHIGAN |  
COUNTY OF WAYNE |

I, CASPAR J. LINGEMAN, Clerk of the County of Wayne and of the Circuit Court thereof, do hereby certify, that I have examined the foregoing copy of Record of Marriage as filed in my office and recorded in Liber 57, Page 59A, and found the said copy a correct transcript thereof.

In testimony whereof, I have, hereunto set my hand and affixed the seal of said Circuit Court this 13th day of November A.D. 1942.

CASPAR J. LINGEMAN, County Clerk

*Thomas J. Leoncavat*

Deputy County Clerk

(SEAL)

SEARCHED **NP** - 4984

[fol. 71] IN CIRCUIT COURT OF WAYNE COUNTY

OPINION OF THE COURT—Filed August 23, 1945

This is a bill to enjoin violation of reciprocal negative easements against occupation by persons not of the Caucasian race. The restrictions were created by mutual agreements among owners after Subdivision. It is conceded that defendants are not of that race, but it is claimed that there are reasons preventing enforcement.

I

It is claimed that several acknowledgements are defective. One is of an outstate execution before a notary with seal. This is expressly authorized by Section 26,604, Michigan Statutes Annotated.

Again, an agreement by the officers of a corporation within the apparent scope of their authority is valid as against mere irregularities. There is no proof that the corporate covenants were executed without authority. These covenants were executed in 1934 and 1935, have been relied upon till now and the parties are barred by laches and estopped from now questioning the technical correctness of their execution.

Defendants rely on *Moore v. Kimball* 291 Mich. 455.

That case does not support them. It merely holds that a restriction which by its term ran for 25 years expired in 25 years, a very reasonable conclusion.

[fol. 72] Finally mutual covenants are founded on mutual considerations. Each covenantor agrees with all the covenantors.

II

These agreements are recorded. Each lot owner had notice of them thereby. In terms they run with the land, and are binding on heirs, executors, and assigns. They are not mere personally covenants. Each purchaser who takes subject to such negative restrictive easements agrees with all others subject to them that he will observe them. This applies not only to such easements as this, but to all others, as for example, restrictions to residential purposes; to brick or stone houses; to building line restrictions, to those forbidding saloons, gambling, factories, livery stables, and so on through the long list of restrictions, all limiting the use of property, and all held valid.

## III IV V

This restriction does not violate either the Federal or the State Constitution. This court is bound on that point by;

Paramalee v. Morris, 218 Mich. 625

Schulte v. Starks, 238 Mich. 102

Corrigan v. Buckley, 271 U. S. 323

The restriction which is invalid is one preventing alienation to any person or class of persons entitled to hold interests in land. Porter v. Barrett, 233 Mich. 374.

The other points in question are ruled by the following cases:

Erickson v. Tapert, 127 Mich. 457

Allen v. Detroit, 167 Mich. 464

[fol. 73] Northwestern Home Owners v. Sheehan, 310 Mich. 188

Wilcox v. Mueller, 250 Mich. 167

Moreton v. Palmer, 239 Mich. 409

Decree may enter for plaintiffs with costs to be taxed.

Guy A. Miller, Circuit Judge.

Dated: August 22, 1945.

[fol. 74] IN CIRCUIT COURT OF WAYNE COUNTY

DECREE—Filed August 29, 1945

At a session of said court, held in the Wayne County Building, in the City of Detroit, said County and State, on this 29th day of August, A. D. 1945.

Present: The Hon. Guy A. Miller, Circuit Judge.

This case came on to be heard upon the pleadings and proofs taken in open court and was argued by counsel for the respective parties, and the court being fully advised in the premises and upon due consideration thereof, finds that all the material allegations in the bill of complaint are true as therein stated.

The court further finds that the property known as Lot No. 52 of Seebaldt's Subdivision, located on the north side of Seebaldt Avenue, between Firwood and Beechwood Ave-

nues, in the City of Detroit, Michigan, and commonly known as 4626 Seebaldt Avenue, is restricted as follows:

"This property shall not be used or occupied by any person or persons except those of the Caucasian race;"

that defendants, Orsel McGhee and Minnie S. McGhee, his wife, are not of the Caucasian race but are of the colored or Negro race; that defendants purchased said property with full knowledge of said restriction and are now using and occupying it as their residence, in violation of the above quoted restriction, which was placed upon said property and [fol. 75] duly recorded in the Office of the Wayne County Register of Deeds many years prior to the date said defendant acquired the property.

On motion of Lloyd T. Chockley, attorney for plaintiffs,

It is Ordered, Adjudged and Decreed that defendants Orsel McGhee and Minnie S. McGhee, within 90 days from the date hereof move from said property, and that thereafter said defendants be and they are hereby restrained and enjoined from using or occupying said premises, and

It Is Further Ordered, Adjudged and Decreed that after the expiration of 90 days from the date hereof that said defendants and all persons claiming through or under them be and they are hereby restrained and enjoined from violating the above restriction and from permitting or suffering said premises to be used or occupied by any person or persons excepting those of the Caucasian race, and

The particular description of the property hereinabove mentioned and referred to is as follows:

Lot No. 52 Seebaldt's Subdivision of part of Joseph Tireman Estate, Quarter Sections 51 and 52, Ten Thousand Acre Tract and Fractional Section 3, Town 2 South, Range 11 East, in the City of Detroit, Wayne County, Michigan, according to the plat thereof recorded in the Office of the Register of Deeds for Wayne County, Michigan, in Liber 27 of Plats, at page 34; commonly known as 4626 Seebaldt Avenue, Detroit, Michigan.

(Signed) Guy A. Miller, Circuit Judge.

[fol. 76] IN CIRCUIT COURT OF WAYNE COUNTY

MOTION TO SET ASIDE DECREE—Filed October 26, 1945

Now come the defendants, Orsel McGhee and Minnie S. McGhee, his wife, by their attorneys, Willis M. Graves and Francis M. Dent, and move the court to grant a rehearing in the above matter, and to vacate and set aside the decree heretofore entered, for the following reasons:

1. Because there is no valid proof of record that the defendants are not of the Caucasian Race.
2. Because 80% of the property in question was not validly restricted.
3. Because the general plan of developing the subdivision included a large number of persons not members of the Caucasian Race as shown by the testimony.
4. Because the court did not follow the rule of construction in interpreting the restriction against use of the property as laid down by the Supreme Court of the State of Michigan.
5. Because the restriction itself is a clear violation of Article 2, Section 16, of the Constitution of the State of Michigan.
6. Because an enforcement of a restriction of this kind would in itself be a violation of the 14th Amendment of the United States Constitution.

[fol. 77] This application and motion is based upon the files and records in the above entitled cause, and the affidavit of Francis M. Dent, hereto attached.

Willis M. Graves, 446 E. Warren Avenue, Detroit 1,  
Michigan; Francis M. Dent, 4256 Russell Street,  
Detroit 7, Michigan, Attorneys for Defendants.

Dated: Oct. 26, 1945.

[fol. 78] AFFIDAVIT ATTACHED TO MOTION TO SET ASIDE  
DECREE

COUNTY OF WAYNE, ss:

Francis M. Dent, being duly sworn, deposes and says that he was one of the trial attorneys for the defendants in the above entitled cause, and that he is familiar with the evidence and believes that the matter as set out in the motion and application for a rehearing are true. Deponent further believes that certain cases and law not cited by the court or by the plaintiffs are decisive in this matter and for that reason, he believes that the defendants are entitled to a rehearing.

Further, deponent saith not:

Francis M. Dent, Deponent.

Subscribed and sworn to before me this 26th day of October, A.D. 1945. (Signed) Herbert L. Dudley,  
Notary Public, Wayne County, Mich. My commission expires 5-31-49.

[fol. 79] IN CIRCUIT COURT OF WAYNE COUNTY

OPINION ON MOTION FOR REHEARING—Filed November 13,  
1945

Five reasons for this motion were given upon the argument.

I. That plaintiffs did not prove defendants were not of the Caucasian race.

Plaintiffs produced photostatic copies of public records relating to the marriage license and marriage of defendants. These show that they described themselves as of the Negro race. These records are admissible as evidence of transactions in the business of the office of County Clerk, and constitute an admission by defendants. They were in court and did not take the stand. If they wish to do so they may until November 17, 1945. However, as the evidence now stands, a *prima facie* case has been made. I do not remember that defendants denied being of the Negro race, in their Answer.

II, III, and IV are merely restatements of arguments made on the trial and are adequately covered by the previous decision.

V: That the restriction in question violates the Federal and State Constitutions.

That it does not is conclusively established by

Corrigan v. Buckley, 271 U. S. 322;  
Porter v. Barrett, 233 Mich. 374.

I have examined the cases cited by defendants. It is necessary only to say that none of them is in point, and none is inconsistent with the decisions above cited. Those decisions are conclusive of the law of the United States and of this State.

Motion denied except as indicated.

Guy A. Miller, Circuit Judge.

Dated:

IN CIRCUIT COURT WAYNE COUNTY

ORDER DENYING REHEARING—Filed November 16, 1945

Defendants' motion for a rehearing of the above entitled cause came on to be heard and the court, after hearing the arguments of counsel for the respective parties and having given careful consideration to the brief submitted by counsel for defendants, finds no merit in the motion and it is

Ordered that said motion be and it is hereby denied.

Guy A. Miller, Circuit Judge.

A true copy, Caspar J. Lingeman, Clerk, By Elizabeth Holder, Deputy Clerk.

[fol. 81] IN CIRCUIT COURT OF WAYNE COUNTY

ORDER GRANTING LEAVE TO APPEAL—Filed January 28, 1946

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the tenth day of January, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Henry M. Butzel, Chief Justice, Leland W. Carr, George E. Bushnell, Edward M. Sharpe, Emerson R. Boyles, Neil E. Reid, Walter H. North, Raymond W. Starr, Associate Justices.

Calendar No. 43271

BENJAMIN S. SIPES, et al., Plaintiffs,

v.

ORSEL McGHEE, et al., Defendants and Appellants

In this cause an application is filed by defendants for leave to appeal from the decree of the Circuit Court for the County of Wayne, in Chancery, and a motion to dismiss said application and a brief in opposition to the application having been had by the court, It is ordered that the application be and the same is hereby granted. It is further ordered that the stay order issued herein on December 5, 1945, be and the same is hereby continued in full force and effect until the further order of this court.

[fol. 82] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 83] IN CIRCUIT COURT OF WAYNE COUNTY

CLAIM OF APPEAL—Filed January 28, 1946

Orsel McGhee and Minnie S. McGhee, defendants in the above entitled cause, claim appeal from the Decree and Order Denying a Re-Hearing, dated November 16, 1945, by

the Honorable Guy A. Miller, one of the judges of the Wayne Circuit Court.

Appellants take general appeal.

Francis M. Dent, 4256 Russell Street, Detroit 7 Michigan. Willis M. Graves, 446 East Warren Avenue, Detroit 1, Michigan, Attorneys for Appellants.

Dated: January 28, 1946.

[fol. 84] IN CIRCUIT COURT OF WAYNE COUNTY

STIPULATION AS TO PRINTED RECORD

It is hereby stipulated that:

1. The printed record on the appeal herein shall consist of:

Calendar Entries

Bill of Complaint

Defendant's Answer

Plaintiff's Pre-Trial Statement

Pre-Trial Statement signed by Judge Chenot

Defendants' Pre-Trial Statement

Amended Answer to Bill of Complaint

Pre-Trial Statement by Judge Jayne

Opinion of Court

Decree

Motion for Re-Hearing

Opinion on Motion

Order Denying Motion

Order Granting Leave to Appeal

Claim of Appeal

Settled Case on Appeal

Statement of Reasons and Grounds of Appeal

This Stipulation.

2. Any claimed mistakes in the printed record shall be settled by the original files and record and the edited transcript and exhibits used in preparing the printed record.

[fol. 85] 3. All orders extending time for appeal and service thereof were duly and timely made.

Younglove and Chockley, Attorneys for Plaintiffs.  
Willis M. Graves and Francis M. Dent, Attorneys  
for Defendants

Dated: \_\_\_\_\_

It is hereby stipulated that all papers requiring service have been duly and timely served and that all exhibits bear the proper certifications.

Lloyd T. Chockley of Younglove & Chockley, Attorneys for Plaintiffs and Appellees. Willis M. Graves and Francis M. Dent, Attorneys for Defendants and Appellants.

[fol. 86] IN CIRCUIT COURT OF WAYNE COUNTY

CERTIFICATE OF COURT—Filed April 9, 1946

I, Guy A. Miller, Circuit Judge, hereby settle the foregoing case which sets forth the substance of all the material testimony taken at, and all of the proceedings during, the hearing resulting in the decree of August 29, 1945, appealed from, including testimony and exhibits taken on separate record.

I further certify that as to the testimony as set forth in full by question and answer, the same are so incorporated because I deem same to be necessary to a full understanding of the questions involved.

Guy A. Miller, Circuit Judge.

We consent to the settlement of the foregoing as the settled case on appeal and waive notice of settling and signing same.

Younglove and Chockley, Attorneys for Plaintiffs and Appellees. Willis M. Graves and Francis M. Dent, Attorneys for Defendants and Appellants.

A true copy: Caspar J. Lingeman, Clerk, by Victor L. Hicks, Deputy Clerk.

Dated at Detroit, Michigan, this 9th day of April, 1946.

[fol. 87] IN SUPREME COURT OF MICHIGAN

BENJAMIN J. SIPES and ANNA C. SIPES, JAMES A. COON and  
ADDIE A. COON, et al.,

v.

ORSEL McGHEE and MINNIE S. McGHEE, His Wife,  
Defendants-Appellants

Before the Entire Bench

OPINION—Filed January 7, 1947

BUSHNELL, J.:

Plaintiffs Benjamin J. Sipes, Anna C. Sipes, and others own and occupy property located in Seebaldt's subdivision and Brooks and Kingon's subdivision on Seebaldt avenue, between Firwood and Beechwood avenues, in the City of Detroit.

Defendants Orsel McGhee and Minnie S. McGhee, his wife, own and occupy property located on the same street in Seebaldt's subdivision. All of the properties occupied by the parties hereto are encumbered by the following recorded covenant:

"This property shall not be used or occupied by any person or persons except those of the Caucasian race."

Defendants seek reversal of a decree upholding and enforcing this restriction. In order to obtain that result, this court is asked to overrule its holding in *Parmalee v. Morris*, 218 Mich. 625, (38 A. L. R. p. 1180) where a restriction was upheld, which read:

"Said lot shall not be occupied by a colored person, nor for the purposes of doing a liquor business thereon."

The questions involved in defendants' appeal concern the execution of recorded instruments relied upon by plaintiffs, the proof of racial identity of the defendants, and the uncertainty of the language of the covenant and its validity.

[fol. 88] Originally there were no racial restrictions affecting the property in question. Subsequently, certain property owners, in the block in which defendants' home is

located, entered into mutual agreements imposing the above quoted restrictions. These various agreements were recorded in the office of the register of deeds of Wayne County on September 7, 1935. The agreements provide that the restriction in question should not be effective unless at least 80 per cent of the property fronting on both sides of the street in the block is subjected "to this or a similar restriction." The deed running to defendants, which is dated November 30, 1944, and recorded on December 1, 1944, is "subject to existing restrictions as of record."

The testimony taken was not extensive and decision turns here, as it did in the circuit court, principally on legal questions. The main factual issue was with respect to the racial identity of the defendants. Sipes testified, over objections as to his qualifications as an expert, that defendants and their two sons are colored people. On cross-examination, he testified:

"I have seen Mr. McGhee, and he appears to have colored features. They are more darker than mine. I haven't got near enough to the man to recognize his eyes. I have seen Mrs. McGhee, and she appears to be the mulatto type."

Defendants did not take the witness stand, and the only testimony produced in their behalf was that of Dr. Norman Humphrey, an assistant professor of Sociology and Anthropology at Wayne University. He expressed the opinion that there is no simple way in which to determine whether a man is a member of the Mongoloid, Caucasoid, or Negroid race. He explained that such classifications are very difficult and cannot be determined without scientific tests. Melvin Tumin, an instructor in the same department, stated that he agreed with the testimony of Dr. Humphrey.

The trial judge did not mention this subject in the written opinion which he filed, but the circuit court decree contains a finding—

"that defendants, Orsel McGhee and Minnie S. McGhee, his wife, are not of the Caucasian race but are of the colored or Negro race."

[fol. 89] The testimony of Sipes is sufficient to sustain this finding. See People v. Dean, 14 Mich. 406, 423.

Appellant's claim that the restrictive agreement was not properly executed by at least 80 per cent of the property owners in the block. The signature of one of the property

owners was acknowledged before a notary public in Indiana. There is no certificate of the clerk of the court or the secretary of state of Indiana attached showing that the notary public who executed the acknowledgment had authority to do so on the date mentioned.

Under the uniform acknowledgment act (3 Comp. Laws 1929, 13333, Stat. Ann. 26.604) it was held in *Reid v. Rylander*, 270 Mich. 263, that such certificate was not necessary, the notary's seal of office being sufficient.

Defendants also question the validity of the group acknowledgments, and the authority of certain corporate officers to execute the restrictive agreement. Our *de novo* examination of the recorded instruments discloses that they were properly executed and acknowledged by the owners of more than 80 per cent of the property covered by the restriction.

The policy was early established in this State that courts will uphold acknowledgments wherever possible and will not suffer conveyances or proof of them to be defeated by technical or unsubstantial objections. See *Morse v. Hewett*, 28 Mich. 481; *Nelson v. Graff*, 44 Mich. 433; *King v. Merritt*, 67 Mich. 194; and *Carpenter v. Dexter*, 8 Wall. 313 (75 L. Ed. 426).

Appellants argue that the restriction under consideration is void for uncertainty. This argument is based upon the following quotation from in the Matter of the Application of Drummond Wren, Supreme Court of Ontario, No. 669-45, decided in October, 1945, where that trial court held that the phrase, "Land not to be sold to Jews or persons of objectionable nationality," was too indefinite to be enforceable. Mr. Justice Mackay said in that case:

"Counsel for the applicant contended before me that the restrictive covenant here in question is void for uncertainty. So far as the words 'persons of objectionable nationality' are concerned; the contention admits of no contradiction. The conveyancer who used these words surely must have realized, if he had given the matter any thought, that no [fol. 90] court could conceivably find legal meaning in such vagueness. So far as the first branch of the covenant is concerned, that prohibiting the sale of the land to 'Jews,' I am bound by the recent decision of the House of Lords in *Clayton v. Ramaden*, (1943) 1 All. E. R. 16, to hold that the covenants is in this respect also void for uncertainty; and -

I may add, that I would so hold even if the matter were *res integra*. The Law Lords in *Clayton v. Ramsden* were unanimous in holding that the phrase 'Jewish parentage' was uncertain and Lord Romer was of the same opinion in regard to the phrase 'of Jewish faith.' I do not see that the bare term 'Jews' admits of any more certainty."

This observation could not be made concerning the language of the restriction now under consideration. It is difficult to see how language could be more certain than that employed, i. e., "This property shall not be used or occupied by any person or persons except those of the Caucasian race."

No one could contend either that persons of the Mongoloid or Negroid races are embraced within the term "Caucasian," or that this term does not specifically exclude all other races. The covenant in question is not void on the ground that it is uncertain.

The principle that contracts in contravention of public policy are not enforceable should be applied with caution, and only in cases plainly within the reasons on which that doctrine rests. *Skutt v. City of Grand Rapids*, 275 Mich. 258, 264. In this same case this court adopted the meaning of public policy from *Pittsburgh, C. C. & St. L. R. Co. v. Kinney*, 95 Ohio St. 64 (115 N. E. 505, L. R. A. 1917D, 641, 643, Ann. Cas. 1918 B, 286):

"What is the meaning of 'public policy?' A correct definition, at once concise and comprehensive, of the words 'public policy,' has not yet been formulated by our courts. Indeed, the term is as difficult to define with accuracy as the word 'fraud' or the term 'public welfare.' In substance, it may be said to be the community common sense and common conscience, extended and applied throughout the State to matters of public morals, public health, public safety, public welfare, and the like. It is that general and well-settled public opinion relating to man's plain palpable [fol. 91] duty to his fellow man, having due regard to all the circumstances of each particular relation and situation.

"Sometimes such public policy is declared by Constitution; sometimes by statute; sometimes by judicial decision. More often, however, it abides only in the customs and conventions of the people,—in their clear consciousness and conviction of what is naturally and inherently

just and right between man and man. It regards the primary principles of equity and justice and is sometimes expressed under the title of social and industrial justice, as it is conceived by our body politic. When a course of conduct is cruel or shocking to the average man's conception of justice, such course of conduct must be held to be obviously contrary to public policy, though such policy has never been so written in the bond, whether it be Constitution, statute or decree of court. It has frequently been said that such public policy is a composite of constitutional provisions, statutes and judicial decisions, and some courts have gone so far as to hold that it is limited to these. The obvious fallacy of such a conclusion is quite apparent from the most superficial examination. When a contract is contrary to some provision of the Constitution, we say it is prohibited by a statute, not by a public policy. When a contract is contrary to a settled line of judicial decisions, we say it is prohibited by the law of the land, but we do not say it is contrary to public policy. Public policy is the cornerstone—the foundation—of all Constitutions, statutes, and judicial decisions, and its latitude and longitude, its height and its depth, greater than any or all of them. If this be not true, whence came the first judicial decision on matter of public policy? There was no precedent for it, else it would not have been the first."

The public policy of this state as to racial discrimination has been expressed in various ways. In chapter 21 of the penal code the Civil Rights sections prohibit such discriminations in public educational institutions and places of public accommodation, amusement, and recreation, 146-148 of Act No. 328, Pub. Acts 1931, (Stat. Ann. 28.343-28.345) and Ferguson v. Gies, 82 Mich. 358, and Bolden v. Grand Rapids Operating Corp., 239 Mich. 318.

Discrimination by State Mental institutions and in the public schools because of race or color is prohibited by statute. 2 Comp. Laws 1929, 6922 (Stat. Ann. 14.845) 2 [fol. 92] Comp. Laws 1929, 7156 (1), Stat. Ann. 15.76 and 2 Comp. Laws 1929, 7368 (Stat. Ann. 15.380).

Life insurance companies doing business in this State are prohibited from making any distinction or discrimination between white and colored persons. 3 Comp. Laws 1929, 12457 (Stat. Ann. 24.293).

It is also the public policy of this State, as expressed in decisions of this court too numerous to mention, to permit and enforce certain restrictions upon the use and occupancy of real property. See authorities listed in Callaghan's Michigan Digest, Vol. 3, pp. 371-403.

Restrictions of a contractual nature are valuable property rights. They cannot even be taken under the power of eminent domain without compensation. *Allen v. City of Detroit*, 167 Mich. 464, and *Johnstone v. Detroit, Grand Haven & Milwaukee R. R. Co.*, 245 Mich. 65, (67 A. L. R. 373). See, also 122 A. L. R. 1464. These rules of property, which have existed during most of the life of the State, should not be brushed aside in the absence of strong and cogent reasons.

As indicated in *Dolby v. State Highway Commissioner*, 283 Mich. 609, 615:

"A recognized rule of property ought not to be overturned without the very best of reasons. *Lewis v. Sheldon*, 103 Mich. 102; *Pleasant Lake Hills Corp. v. Eppinger*, 235 Mich. 174."

In *Parmalee v. Morris*, 218 Mich. 625, it was held that a restrictive covenant similar to the one now under consideration was not void as against public policy.

Restrictions against alienation are quite another matter. This court pointed out the difference in *Porter v. Barrett*, 233 Mich. 373 (42 A. L. R. 1267) following the rule enunciated in *Maudlebaum v. McDonall*, 29 Mich. 78, and held that a restriction prohibiting the sale of certain lands "to a colored person" was void.

The *Parmalee* and *Porter* authorities were followed in *Schulte v. Starks*, 238 Mich. 102. See annotations in 66 A. L. R. at page 531.

Defendants argue that a restriction prohibiting the use of property by other than those of the Caucasian race violates the due process clause of the Constitution of Michigan. (Art. 2, 16) This applicability of this clause was not discussed in *Parmalee v. Morris*, 218 Mich. 625. While we [for. 93] recognize that the concept of "due process" is incapable of exact definition, yet, ever since *Buck v. Sherman*, 2 Doug. 176, we have held that this constitutional right means that every person having property rights affected by litigation is entitled to notice, and a day in court, or a rea-

sonable opportunity to appear and defend his interest. See *Chrysler Corporation v. Unemployment Compensation Commission*, 301 Mich. 351, and *Dation v. Ford Motor Co.*, 314 Mich. 152. Such rights were accorded the defendants in the instant case.

It is argued that the restriction in question violates the 14th Amendment to the Constitution of the United States. Appellees say that this argument was answered in *Corrigan v. Buckley*, 271 U. S. 323 (70 L. ed. 969). We so read the Corrigan case, although that decision partly turned on the inapplicability of the equal protection clause of the 14th Amendment to the District of Columbia, and the appeal was dismissed for want of jurisdiction.

Defendants argue that the language—

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” (art. 14, 1 U. S. Const.)

means that the judicial acts of courts of a sovereign state are the acts of that state within the constitutional inhibition. They conclude therefrom that the decree in this cause was unconstitutional state action in that it deprived them of “the equal protection of the laws.” To accept this reasoning would also at the same time deny “the equal protection of the laws” to the plaintiffs and prevent the enforcement of their private contracts.

We have never hesitated to set aside a law which was repugnant to the equal protection clause of the amendment but, on the other hand, we have never applied the constitutional prohibition to private relations and private contracts.

We were recently urged to apply a racial restriction to property under a claimed general plan, in *Kathan v. Stevenson*, 307 Mich. 485. This we declined to do. See, also, *Kathan v. Williams*, 309 Mich. 219, and *Gableman v. Department of Conservation*, 309 Mich. 416. We are not aware of any decision of courts of last resort, State or Federal, which have applied this constitutional prohibition to private agreements containing racial restrictive covenants.

The several amicus curiae briefs indulge in considerable [fol. 94] amplification and elaboration upon appellant's

arguments on public policy and the constitutional questions involved in this appeal. In addition, these briefs contain valuable material with respect to the related social and economic problems. We are impressed with the fact that the Negro population of Detroit has increased from 40,438 in 1920 to approximately 210,000 in 1944, and that it then was approximately 12 per cent, of the population of the city.

The arguments based on the factual statement pertaining to questions of public health, safety and delinquency are strong and convincing. However, we must confine our decision to the matters within the record submitted to us and the questions raised in the briefs of the parties to the cause.

It is suggested that the intervention of a World War and the declarations of statesmen and international deliberative bodies now makes the device of restrictive covenants against minority racial groups a matter of concern and public policy rather than that of private contract, as was assumed by the court in the Parmalee decision in 1922. Some of the briefs go so far as to insist that the declaration of the Atlantic Charter and the United Nations' conference at San Francisco are international treaties and have the effect of law.

We do not understand it to be a principle of law that a treaty between sovereign nations is applicable to the contractual rights between citizens of the United States when a determination of these rights is sought in State courts. So far as the instant case is concerned, these pronouncements are merely indicative of a desirable social trend and an objective devoutly to be desired by all well-thinking peoples. These arguments are predicated upon a plea for justice rather than the application of the settled principles of established law.

We direct attention to the differentiation made by Mr. Justice Oran M. Butler, between justice and law, in *Duncan v. Magette*, 25 Tex. 241, 251 decided in 1861. He said:

"I avail myself of the opportunity afforded by this application, to present my own views upon the foundation and force of this appeal to the sense of justice of the court, whether used as an influencing consideration, in interpreting and enforcing the rules of law, or directly urged as the basis of judicial action. A frequent recurrence to first [fol. 95] principles is absolutely necessary in order to keep precedents within the reason of the law."

"Justice is the dictate of rights, according to the common consent of mankind generally, or of that portion of mankind who may be associated in one government, or who may be governed by the same principles and morals.

"Law is a system of rules, conformable, as must be supposed, to this standard, and devised upon an enlarged view of the relations of persons and things, as they practically exist. Justice is a chaotic mass of principles. Law is the same mass of principles, classified, reduced to order, and put in the shape of rules, agreed upon by this ascertained common consent. Justice is the virgin gold of the mines, that passes for its intrinsic worth in every case, but is subject to a varying value, according to the scales through which it passes. Law is the coin from the mint, with its value ascertained and fixed, with the stamp of government upon it which insures and denotes its current value.

"The act of moulding justice into a system of rules detracts from its capacity of abstract adaptation in each particular case; and the rules of law, when applied to each case, are most usually but an approximation to justice. Still, mankind have generally thought it better to have their rights determined by such a system of rules, than by the sense of abstract justice, as determined by any one man, or set of men, whose duty it may have been to adjudge them.

"Whoever undertakes to determine a case solely by his own notions of its abstract justice, breaks down the barriers by which rules of justice are erected into a system, and thereby *by* annihilates law.

"A sense of justice, however, must and should have an important influence upon every well organized mind in the adjudication of causes. Its proper province is to superinduce an anxious desire to search out, and apply, in their true spirit, the appropriate rules of law. It cannot be lost sight of. In this, it is like the polar star that guides the Voyager, although it may not stand over the port of destination.

"To follow the dictates of justice, when in harmony with the law, must be a pleasure; but to follow the rules of law, in their true spirit, to whatever consequences they may lead, is a duty. This applies as well to rules establishing remedies, as to those establishing rights. These views will, [fol. 96] of course, be understood as relating to my own convictions of duty, and as being the basis of my own judicial action."

In this appeal we are obliged to differentiate between public rights and private or contractual rights. The former is unquestionably the responsibility of the State, but the action of a State court in requiring or refusing enforcement of private contractual rights is, in our opinion, not within the prohibitions of the 14th Amendment. To hold otherwise would be to nullify many statutory enactments and overrule countless adjudicated cases. The unsettling effect of such a determination by this court, without prior legislative action or a specific Federal mandate, would be, in our judgment, improper.

It is impossible, within the confines of this opinion, to distinguish and differentiate the numerous authorities cited pro and con in the various briefs. We do, however, direct attention to a most recent annotation of authorities on the subject in 162, A. L. R. 180, et seq., which follows the opinion in Mays v. Burgess, 79 App. D. C. 343 U. S. 868; rehearing denied, 325 U. S. 896. See, also 36 Harvard Law Review, December, 1922; 12 University of Chicago Law Review, February, 1945; 33 California Law Review, March, 1945.

What we must determine in this appeal is whether we shall now overrule Parmalee v. Morris, 218 Mich. 625.

We are guided in our consideration of this problem by our statements in the recently decided case of Bricker v. Green, 313 Mich. 218.

After a careful study, we are not persuaded that the rule laid down in the Parmalee case was wrong, or is wrong now.

It is controlling with respect to the instant case.

The decree entered by the trial court is affirmed, with costs to appellees.

Signed: George E. Bushnell, Leland W. Carr, Henry M. Butzel, Edward M. Sharpe, Neil E. Reid, John R. Dethmers, Walter H. North, Emerson R. Boyles.

[File endorsement omitted.]

## [fols. 97-99] IN SUPREME COURT OF MICHIGAN

Present the Honorable Leland W. Carr, Chief Justice, Henry M. Butzel, George E. Bushnell, Edward M. Sharpe, Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, Associate Justices.

BENJAMIN J. SIPES, et al., Plaintiffs,

vs.

ORSEL McGHEE, et al., Defendants and Appellants

JUDGMENT—January 7, 1947

This cause having been brought to this Court by appeal from the Circuit Court for the County of Wayne, in Chancery, and having been argued by counsel, and due deliberation had thereon, it is now ordered, adjudged and decreed by the Court, that the decree of the Circuit Court for the county of Wayne, in Chancery be and the same is hereby in all things affirmed.

And it is further ordered, adjudged and decreed that the plaintiffs do recover of and from the defendants, their costs to be taxed.

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IN SUPREME COURT OF MICHIGAN

[Title omitted]

SUBMISSION OF MOTION FOR REHEARING—February 18, 1947

In this cause a motion for rehearing is duly submitted.

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[fol. 100] IN SUPREME COURT OF MICHIGAN

[Title omitted]

APPLICATION AND MOTION FOR REHEARING

Now come the defendants and appellants by their attorneys, Willis M. Graves and Francis M. Dent, and move the court to grant a rehearing in the above matter, which was decided on January 7, 1947 because the court erred in the following respects:

I. In holding that it was requested to overrule its decision in the case of *Parmalee v. Morris*, 218 Michigan 625.

II. In holding that the racial identity of the defendants had been established as Negroes.

III. In holding that the defendants were not deprived of equal protection of the law as guaranteed by the XIV Amendment of the United States Constitution.

[fol. 101] IV. In holding that the decree of a court of equity, holding enforcement of agreements restricting the legal occupancy of a man's own home is not such State action as is prohibited by the XIV Amendment to the United States Constitution.

V. In holding that property held by title in Fee Simple cannot be used in any legal way by its owner.

VI. In holding that a restrictive covenant against occupancy against certain races is not against the public policy of the State of Michigan.

VII. In holding that state courts are not bound by treaties of the United States as set out in Article VI, Section 2 of the United States Constitution.

VIII. In holding that contracts and property rights supersede human rights.

This motion is based upon files and record in the above entitled cause and upon the affidavit of Willis M. Graves hereto attached.

Francis M. Dent, Willis M. Graves, Attorneys for Defendants and Appellants.

Dated: 20th of January, 1947.

[fol. 102]

[Title omitted]

#### AFFIDAVIT IN SUPPORT OF MOTION FOR REHEARING

STATE OF MICHIGAN,  
County of Wayne, ss:

Willis M. Graves, being first duly sworn, deposes and says that he is one of the trial attorneys in the above entitled cause and that he has read the opinion of this

court as handed down on January 7, 1947, and that he is familiar with all of the records and briefs in this cause filed herein.

Deponent further states that he believes that the reasons and arguments, herein set forth for the purpose of the application for a rehearing, are substantial and not dilatory and that this motion is made to protect the rights [fol. 103] of the defendants and appellants and especially in application for an appeal to the Supreme Court of the United States.

Further than this deponent says not.

Willis M. Graves.

Subscribed and sworn to before me this 20th day of January, A. D. 1947. Oza A. Jolly, Notary Public, Wayne County, Michigan.

My commission expires June 7, 1949.

[fol. 104]

[Title omitted]

#### ARGUMENT IN SUPPORT OF MOTION FOR REHEARING

1. The defendants did not specifically ask the court to overrule the case of *Parmalee v. Morris*, 218 Michigan 625. In fact, the defendants requested that the court follow that opinion in the following respect:

"Were defendant's claim of rights based upon any action taken by the authority of the State an entirely different question would be presented."

Page 625—*Parmalee v. Morris*, supra.

We have shown or attempted to show that the authority of the state has been used at every point in a proceeding of this kind. That is, for example, the Register of Deeds accepts the covenant for record for which the Statute gives [fol. 105] him no authority to do. Then the court, acting as an arm of the state first holds such a restrictive covenant valid, and then by virtue of its constitutional authority seeks to enforce said covenant by contempt proceeding\* and with the aid of the sheriff.

II. The burden of proof was upon the plaintiff as to the defendants' racial identity. In fact, no competent evi-

dence was submitted by the plaintiffs—since it has been held repeatedly by this court that only experts could give opinion evidence. The only such evidence introduced was that by the defendants. We desire that the courts specifically say whether or not a layman may give opinion evidence on the question of a person's racial identity. The case cited by this court in *People v. Dean*, 14 Michigan 406, 423, holds that:

"All persons in whom white blood so far preponderates that they have less than one-fourth of African blood are white, and no other persons of African descent can be so regarded."

No evidence at all as to the percentage of any kind of blood or descent was offered in the instant case. The Statutes of Michigan give the plaintiffs the right to subpoena the defendants for close examination. Since they did not do this there is no burden upon the defendants, themselves, to attempt to prove the plaintiffs' case.

III. This court in *Kuhn v. Common Council*, 70 Michigan 537, makes the following statement:

"Property does not consist merely of the title and possession. It includes the rights to make *any legal use of it* . . . or to sell and transfer it . . . ."

[fol. 106] *Holden v. Hardy*, 169 U. S. 366, 391, uses the following language:

"Property is more than the thing which a person owns. It is elementary that it includes the right to acquire, *use* and dispose of it. The Constitution protects these *essential attributes of property*."

"That one may dispose of his property, subject only to the control of lawful enactments curtailing that right in the public interest, must be conceded."

*Buchanan v. Warley*, 245 U. S. 60, 75.

"Property consists of the *free, use, enjoyment* and disposal of a person's acquisition without control or diminution *save by the law of the land*."

*1 Blackstone's Commentaries (Cooley's Ed.)* 127.

Certainly by no stretch of the imagination can private agreements by individuals make occupancy of one's own property illegal.

IV. The defendants and appellants show in their brief before the Supreme Court in the instant case, pages 45 to 47, both inclusive, that the decree of a court upholding restrictions is such state action as is prohibited by the XIV Amendment to the Federal Constitution.

We quote here a case, cited in our briefs and not discussed in the court's opinion, that we contend is conclusive in that it discusses fully the question of "occupancy." That case, quoted here, did not deal primarily with purchase and sale of property, but solely with the question of the color of the occupant. The question before the United States Supreme Court was stated:

[fol. 107] "The concrete question here is: May the occupancy, and necessarily, the purchase and sale of property of which occupancy is an incident, be inhibited by the States, or by one of its municipalities, solely because of the color of the proposed occupant of the premises? That one may dispose of his property, subject only to the control of lawful enactments curtailing that right in the public interest, must be conceded. The question now presented makes it pertinent to inquire into the Constitutional right of the white man to sell his property to a colored man, having in view the legal status of the purchaser and the occupant."

*Buchanan v. Warley*, 245 U. S. 60, 75.

We therefore contend that any action depriving a person of occupancy by reason of the occupant's color, under state authority, is state action prohibited by the XIV Amendment to the United States Constitution.

V. The Statutes of the State of Michigan define a title in Fee Simple in Section 12922—Sec. 2 of the Michigan Compiled Laws, 1929:

"Every estate of inheritance shall continue to be termed a fee simple, or fee; and every such estate, when not defeasible or conditional, shall be a fee simple absolute, or an absolute fee."

Certainly if a person is prohibited to *occupy* his own property he does not have a title in Fee Simple. The due processes of law clause of the XIV Amendment to the Constitution, would fully protect him against any attempt of

a State Court to deprive him of the principal incident of property.

VI. The Constitutional Convention of the State of Michigan has seen fit to grant people of Negro descent all the [fol. 108] rights that people of any other racial identity have in the State of Michigan. The people of the State of Michigan then adopted this Constitution. Nothing in our judgment could show more clearly the public policy of the entire state as opposed to some subdivision in an over-crowded city than this action by the people.

The elected representatives in the state legislature have taken every means in their power to also set out the same public policy for the state.

The courts of the state also followed this public policy until the case of *Parmalee v. Morris* decided in June, 1922. The case of *Ferguson v. Gies*, 82 Michigan 358, was until the decree of *Parmalee v. Morris*, possibly the strongest statement of the absolute rights of Negroes of the public policy of the State of Michigan toward them in the United States. The only instances in which this has been departed from are cases in which restrictions against the legal use of property has been attempted by private individuals, under color of law and with state authority. The only thing that has given these restrictions the force of a law (for all intents and purposes, a statute) has been the court-made law in this line of cases. It is difficult to say, in view of the above facts, how the courts of this state can say such race restrictions are not against public policy.

VII. Article VI, Clause 2<sup>o</sup> of the Constitution of the United States declares:

"The Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme [fol. 109] Law of the Land and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding" (Italics added).

The Constitution in so many words, says that a treaty entered into by the United States with another or other nations constitutes law which has precedence over all other law throughout this country.

The rationale underlying this supremacy has been fully interpreted in *Kennett v. Chambers*, 14 How. 38, by Mr. Justice Taney, whose opinion states, in part, that:

" . . . as the sovereignty resides in the people, every citizen is a portion of it, and is himself personally bound by the laws which the representatives of the sovereignty may pass, or the treaties into which they may enter, within the scope of their delegated authority."

*Missouri v. Holland*, 252 United States 416;  
*Hauenstein v. Lynham*, 100 United States 483;  
*Nielson v. Johnson*, 279 United States 47;  
*De Geofrey v. Riggs*, 133 United States 258;  
*United States v. Pink*, 315 United States 203.

The court, per Taney, J. states in *Kenneth v. Chambers*:

"These treaties, while they remained in force were, by the Constitution of the United States, the supreme law, and binding not only upon the government, but upon every citizen. No contract could lawfully be made in violation of their provisions."

VIII. We quote the following from the opinion of the court in the instant case:

"These rules of property, which have existed during [fol. 110] most of the life of the state, should not be brushed aside in the absence of strong and cogent reasons."

We believe that an opinion handed down as recently as January 7, 1946, should be a strong and cogent reason why this court should put human rights above property rights. We quote from the opinion of Mr. Justice Black:

"When we balance the Constitutional rights of owners of property against those of the people to enjoy freedom of press and religion, as we must here, we remain mindful of the fact that the latter occupy a preferred position. As we have stated before the rights to exercise the liberties safeguarded by the First Amendment 'lies at the foundation of free government by free men and we must in all cases' weigh the circumstances

and appraise the reasons in support of the regulation of those rights."

*Marsh v. State of Ala.*, 90 Lawyers Ed. No. 6,  
page 227, 66 Supreme Court 276;  
*Schneider v. Irvington*, 308 U. S. 147, 161.

In a concurring opinion in *Marsh v. Alabama*, supra, Mr. Justice Frankfurter said:

"So long as the scope of the guarantees of the Due Process Clause of the 14th Amendment by absorption of the First remains that which the court gave in the series of cases in the October term 1942, the circumstances of the present case appear to me to clearly fall within it."

[fol. 111-112]

#### Conclusion

In view of the above reasons and the argument in support thereof, we believe that the court should grant a rehearing and that such a rehearing should reverse and set aside the decree of the court below. In case this court does not feel so inclined, we ask that it grant a stay of proceedings in order that the defendants and appellants may apply for reference to appeal to the Supreme Court of the United States.

Respectfully submitted, Francis M. Dent, Willis N. Graves, Attorneys for Defendants and Appellants.

[fol. 113]

#### IN SUPREME COURT OF MICHIGAN

[Title omitted]

#### OBJECTIONS TO REHEARING

Plaintiffs and appellants herein object to the granting of a rehearing as prayed by defendants and appellees, and for answer to the eight assignments of error, say:

[fol. 114]

I

As this court in *Parmalee v. Morris*, 218 Mich. 625, held a racial restriction valid and enforced it, we cannot see how it would be possible for the court to hold the restriction in this case invalid without overruling the Parmalee case. It is therefore clear that appellants by asking that the restric-

tion be held invalid did by necessary implication ask that *Parmalee v. Morris* be overruled.

## II

The racial identity of defendants as negroes was clearly established by the testimony of the neighbors and by an affidavit made by defendant, Orsel McGhee, in his application for license to marry, in which he stated under oath that both he and his wife were colored.

This court has repeatedly held that the language in a restriction is to be taken in its ordinary and generally understood or popular sense, and is not to be subjected to technical refinement.

*Galton v. Heftler*, 284 Mich. 445;

*Seeley v. Phi Sigma Delta*, 245 Mich. 253;

*Tabern v. Gates*, 231 Mich. 581;

*Library, etc. Ass'n v. Giesen*, 229 Mich. 89.

Under this rule there can be no doubt or misunderstanding as to what was intended by this restriction or of its application to defendants herein, who do not deny that they are negro.

## III

The claim that defendants were deprived of equal protection of the law as guaranteed by the XIV Amendment to the Constitution of the United States has been passed upon and decided adversely to such claim by this court in [fol. 115] *Parmalee v. Morris*, 218 Mich. 625, by the United States Supreme Court in *Corrigan v. Buckley*, 271 U. S. 323, and by every other court of last resort to which it has ever been submitted. See note to *Mays v. Burgess*, 162 A. L. R. 168.

## IV

The claim that this court by its decree enforcing a private contract violates the XIV Amendment finds no support either in reason or precedent. The Amendment provides that "no State shall make or enforce any law . . .," and in this case no law is involved, only a private contract which defendants admit is not unconstitutional (appellants' brief, p. 45-46). To refuse to enforce this valid contract would deny to plaintiffs the equal protection of the law. On precedent defendants have been unable to find a single case in

which any court of last resort has ever refused to enforce a private contract because of the provisions of the XIV Amendment.

## V

To claim broadly as defendants do under this head that property held by title in fee simple can be used in any legal way by its owner, is so obviously wrong as to scarcely require argument. To so hold would invalidate all restrictions, easements, and leases. All the foregoing are examples of valid and legal contracts which curtail the right of an owner to make certain uses of his property. All are lawful and all have been universally upheld and enforced by the courts without question.

## VI

That racial restriction covenants are not contrary to the public policy of Michigan has been decided by this court in [fol. 116] *Parmalee v. Morris, supra*, and by the courts of every other State to which the question has ever been submitted. Note to *Mays v. Burgess*, 162 A. L. R. 168.

## VII

This court did not hold that it was not bound by treaties of the United States. It merely held that generalized statements in certain public documents would not control the rights of private citizens of the United States to make contracts between themselves regarding their own private property.

## VIII

This court did not hold that contracts and property rights supersede human rights, and plaintiffs did not and do not claim that such holding should be made. We simply claim that white people have rights as well as negroes and that among these is the right to make their homes and rear their children in white neighborhoods. The issue as stated on page 632 of the Parmalee case, is a simple one, i.e., "shall the law applicable to restrictions as to occupancy contained in deeds to real estate be enforced or shall one be absolved from the provisions of the law simply because he is a negro?"

[fol. 117]

## Conclusion

In their motion for a rehearing defendants do not claim that the court has misapprehended the facts nor do they cite any authorities or advance any reasons which have not been fully argued and considered.

It is respectfully submitted the motion should be denied.

Younglove & Chockley, Attorneys for Plaintiffs and Appellees. Business Address: 1510 Ford Building, Detroit 26, Michigan.

[fol. 118]

## IN SUPREME COURT OF MICHIGAN

[Title omitted]

ORDER DENYING MOTION FOR REHEARING—March 3, 1947

A motion for rehearing having been heretofore submitted herein, it is hereby denied, with costs to plaintiffs.

## IN SUPREME COURT OF MICHIGAN

[Title omitted]

ORDER GRANTING STAY—April 8, 1947

In this cause a motion is filed by defendants for a stay of proceedings pending appeal to the Supreme Court of the United States, and due consideration thereof having been [fol. 119] had by the Court. It is ordered that all proceedings in said cause be stayed for a period of thirty days from and after this date, and that any further stay must be obtained from the Supreme Court of the United States.

Clerk's Certificate to foregoing transcript omitted in printing.

## [fol. 120] SUPREME COURT OF THE UNITED STATES

## ORDER ALLOWING CERTIORARI—Filed June 23, 1947

The petition herein for writ of certiorari to the Supreme Court of the State of Michigan is granted, and the case is assigned for hearing immediately following the argument in No. 1268, Shelley vs. Kraemer.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Reed took no part in the consideration or decision of this application.

(1562)